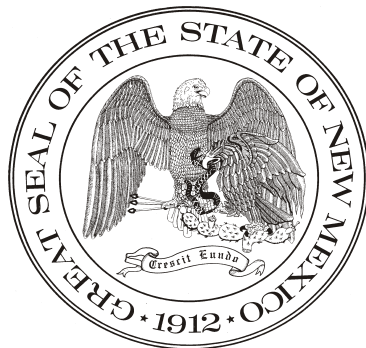


WATER AND NATURAL RESOURCES COMMITTEE

2010 INTERIM
FINAL REPORT
to the
FIFTIETH LEGISLATURE
FIRST SESSION



New Mexico Legislative Council Service
Santa Fe, New Mexico
December 2010

WATER AND NATURAL RESOURCES COMMITTEE

2010
REPORT

Santa Fe, New Mexico
December 2010
File No. 205.176-10

**2010 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
WATER AND NATURAL RESOURCES COMMITTEE**

Members

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William J. Gray
Sen. Clinton D. Harden, Jr.

Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. George K. Munoz
Sen. Steven P. Neville
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan

Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn
Rep. James R.J. Strickler
Rep. Don L. Tripp
Sen. Peter Wirth

Work Plan

The Water and Natural Resources Committee was created by the New Mexico Legislative Council on May 12, 2010. The New Mexico Legislative Council requested all interim committees to provide input to the Government Restructuring Task Force regarding agencies that the particular committee regularly deals with. In addition, the committee proposes to focus on the following topics:

1. Land and water issues, including testimony on the following agenda items:
 - reports required by statute from the state engineer, Interstate Stream Commission and Energy, Minerals and Natural Resources Department;
 - Interstate Stream Commission contract with Intel on offset rights;
 - adjudications status update;

- Gila River planning process status;
 - acequia issues;
 - Lower Rio Grande Public Water Works Authority issues;
 - ground water administration — ground water modeling and implementation of conservation regulations as applied to ground water, conservation and beneficial use;
 - dam safety and liability issues;
 - ongoing and projected annual costs of water projects and programs;
 - final Aamodt settlement terms/benefits;
 - deep well permitting process;
 - Utton Center and Joe M Stell Ombudsman program update;
 - use of return-flow credits in water rights administration;
 - aquifer mapping projects; and
 - flood control levee and flood plain mapping issues.
2. Agriculture issues, including testimony on the following agenda items:
- merging the Organic Commodities Commission with the New Mexico Department of Agriculture;
 - Soil and Water Conservation Commission programs;
 - dairy operation waste disposal rules;
 - elk depredation issues;
 - commercial hemp production; and
 - trends in agriculture.
3. Miscellaneous natural resource issues, including testimony on the following agenda items:

- New Mexico Forest and Watershed Institute presentation; and
- effect of incorporation by Anthony on colonias funding.

**Water and Natural Resources Committee
2010 Approved Meeting Schedule and Budget**

<u>Date</u>	<u>Location</u>
June 4	Santa Fe
July 21-22	Santa Fe
August 30-31	Las Cruces
October 18-19	Santa Fe
November 29-30	Santa Fe

LEGISLATIVE INTERIM WATER AND NATURAL RESOURCES COMMITTEE SUMMARY OF WORK

The committee was scheduled for five meetings during the 2010 interim, with all except the August meeting held in Santa Fe due to budget concerns. However, the committee did hold its August meeting in Las Cruces to address several issues specific to southern New Mexico.

Budget issues were also apparent when the state engineer reported that the adjudications program has a 30% vacancy rate in its legal and hydrographic survey staffing for fiscal year 2011 and a \$708,000 reduction in its 2011 budget appropriation. Other issues discussed during the interim that are affected by the dearth of state funds include numerous dams that require rehabilitation statewide, substandard levees in the middle Rio Grande region and the ongoing costs of a number of water projects and programs. There was some good news over the interim, with Congress approving the *Aamodt* and Taos water rights settlements, along with federal funding for those settlements and the Navajo settlement. Also of note was a proposed agreement between the Interstate Stream Commission (ISC) and Intel for the eventual transfer of water rights owned by Intel to the strategic water reserve in exchange for ISC coverage of Intel's offset obligations once the company stops using certain wells. That agreement has not yet been approved by the ISC.

The committee endorsed five pieces of legislation this interim: three bills, one appropriation and one joint memorial.

A bill establishing the Utton Transboundary Resource Center and the Joe M Stell Ombudsman Program at the University of New Mexico will be sponsored by Senator Cisco McSorley.

Senator Gerald Ortiz y Pino will sponsor a bill amending the Wastewater Facility Construction Loan Act to include mutual domestic water consumers associations in the definition of "local authority". Enactment of the bill would make mutual domestic water consumers associations eligible to receive financial assistance for the installation and operation of wastewater facilities.

A bill expanding the scope of in-state purchasing preferences by state and local government agencies will be carried by Senator Timothy M. Keller.

Representatives Jeannette O. Wallace and Don L. Tripp will co-sponsor a bill to appropriate \$85,000 to the New Mexico Department of Agriculture to promote and develop the state's farmers' markets.

A house joint memorial recognizing that the revitalization and development of local and regional food systems are critical parts of promoting the health, well-being and economic vitality of rural and underserved urban communities will be carried by Representative Ben Lujan.

Total expenditures for voting members during the interim were \$31,591, and expenditures for advisory members totaled \$23,285.

AGENDAS

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 4, 2010
Room 322, State Capitol**

Friday, June 4

- | | |
|-----------|--|
| 1:30 p.m. | Call to Order
—Representative Andy Nuñez, Chair |
| 1:35 p.m. | Improving Efficiency and Possible Restructuring: Working with the Government Restructuring Task Force
—Paula Tackett, Director, Legislative Council Service (LCS), or
Raúl E. Burciaga, Director-Designate, LCS |
| 2:00 p.m. | Status Reports — Office of the State Engineer and Interstate Stream Commission
—Estevan Lopez, Director, Interstate Stream Commission
—John D'Antonio, State Engineer |
| 3:30 p.m. | 2010 Interim Work Plan, Itinerary and Meeting Schedule |
| 4:00 p.m. | Adjourn |

Revised: July 14, 2010

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**July 21-22, 2010
Room 322, State Capitol
Santa Fe**

Wednesday, July 21

- 9:30 a.m. **Call to Order**
 —Representative Andy Nuñez, Chair
- 9:35 a.m. **Interstate Stream Commission Proposal for Offset Contract with Intel**
 —Estevan Lopez, Director, Interstate Stream Commission
 —Amy Haas, General Counsel, Interstate Stream Commission
- 12:15 p.m. **Lunch**
- 1:45 p.m. **Deep Well Permitting Process and Aquifer Mapping**
 —John D'Antonio, State Engineer
 —Peggy Johnson, Associate Director, Hydrogeologic Programs, Bureau
 of Geology and Mineral Resources, New Mexico Institute of
 Mining and Technology
- 2:45 p.m. **Projected Costs of Current and Planned Water Projects and
Programs**
 —John D'Antonio, State Engineer
 —Estevan Lopez, Director, Interstate Stream Commission
- 3:45 p.m. **Aamodt Settlement Update**
 —John D'Antonio, State Engineer
 —DL Sanders, Chief Counsel, Office of the State Engineer
 —Dick Rochester, President, Pojoaque Basin Water Alliance
 —John Utton, Attorney for Santa Fe County
- 4:45 p.m. **Recess**

Thursday, July 22

- 9:00 a.m. **Government Restructuring Reports**
 —Jim Noel, Secretary-Designate, Energy, Minerals and Natural
 Resources Department

—Ron Curry, Secretary, Department of Environment

10:30 a.m.

Government Restructuring Report

—John D'Antonio, State Engineer

11:30 a.m.

Adjourn

Revised: August 25, 2010

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**August 30-31, 2010
Barbara Hubbard Room, Pan American Center Annex
New Mexico State University
Las Cruces**

Monday, August 30

- 9:30 a.m. **Call to Order**
—Representative Andy Nuñez, Chair
- 9:35 a.m. **Welcome and Opening Remarks**
—New Mexico State University (NMSU) Representative TBA
- 9:45 a.m. **Arizona Settlements Act Gila River Update**
—Martha Shuman, Co-Chair, Arizona Water Settlements Act
Stakeholders Group
—Topper Thorp, Co-Chair, Arizona Water Settlements Act Stakeholders
Group
—Craig Roepke, Interstate Stream Commission
—Howard Hutchinson, Gila-San Francisco Water Commission
- 10:45 a.m. **Conservation of Water and Agricultural Water Use**
—John Longworth, Office of the State Engineer
—Dr. Zohrab Samani, NMSU
- 12:00 noon **Lunch**
- 1:30 p.m. **Adjudication Status Update**
—Judge James J. Wechsler, New Mexico Court of Appeals
—Celina Jones, Administrative Office of the Courts
—Greg Ridgley, Office of the State Engineer
- 2:45 p.m. **Lower Rio Grande Adjudication Update**
—Judge Jerald A. Valentine, Third Judicial District
—Laurie Knowles, Office of the State Engineer
- 3:45 p.m. **Lower Rio Grande Public Water Works Authority Issues**
—Martin Lopez, Lower Rio Grande Public Water Works Authority
—Rick Martinez, Department of Finance and Administration
—Karen Nichols, Lower Rio Grande Public Water Works Authority

4:45 p.m. **Recess**

Tuesday, August 31

9:00 a.m. **Proposal on Regional Flood Control Authority**
—Joe Delk, President, Dona Ana Soil and Water Conservation District
—Cliff Terry, South Central New Mexico Stormwater Management
 Coalition
—Gary Eslinger, Elephant Butte Irrigation District
—Michael Johnson, Las Cruces Public Works Director
—Brian Heines, Dona Ana County Manager

10:30 a.m. **New Mexico Rural Water Association Legislative Proposals**
—Matthew Holmes, Executive Director, New Mexico Rural Water
 Association
—Clarence Aragon, President, New Mexico Rural Water Association

11:30 a.m. **Off-Highway Motor Vehicle Act Administration**
—Tod Stevenson, Director, Department of Game and Fish

12:30 p.m. **Adjourn**

Revised: October 13, 2010

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

October 18-19
Room 322, State Capitol
Santa Fe

Monday, October 18

9:00 a.m.	Call to Order —Representative Andy Nuñez, Chair
9:05 a.m.	Water Trust Board Report —John D'Antonio, State Engineer
9:45 a.m.	State and Regional Water Plan Update —Angela Schackel-Bordegaray, Water Planner, Interstate Stream Commission
10:30 a.m.	Utton Center and Joe M Stell Ombudsman Program —Susan Kelly, Director, Utton Transboundary Resource Center —Darcy Bushnell, Joe M Stell Ombudsman Program
11:15 a.m.	Soil and Water Conservation Commission Proposals —Jose Varela-Lopez, Soil and Water Conservation Commission
12:15 p.m.	Lunch
1:45 p.m.	Industrial Hemp Production —Daniel Manuchia —Jennifer Muskrat
2:45 p.m.	Buckman Direct Diversion Project Status —Rick Carpenter, Project Manager —Brian Snyder, Public Utilities Director, City of Santa Fe —Kevin Smith, Site Manager, Los Alamos Site Office —George Rael, Environmental Programs Manager, Los Alamos Site Office
3:45 p.m.	Environmental Flow Proposal —Steve Harris, Rio Grande Restoration

5:00 p.m. **Recess**

Tuesday, October 19

9:00 a.m. **Organic Commodity Commission**
—Theresa G. Connaughton, Chair, Organic Commodity Commission

9:45 a.m. **St. Augustine Plains Water Issues**
—Eileen Dodds
—Anita Hand-Gutierrez
—Lin Kennedy

10:15 a.m. **Agricultural Issues and Game Permits**
—Caren Cowan, New Mexico Cattlegrowers' Association

10:45 a.m. **The E-Plus Program, Elk Permits and GMU Boundaries**
—Tod Stevenson, Director, Department of Game and Fish

12:15 p.m. **Adjourn**

Revised: November 24, 2010

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 29-30
Room 307, State Capitol
Santa Fe**

Monday, November 29

- | | |
|------------|--|
| 9:00 a.m. | Call to Order
—Representative Andy Nuñez, Chair |
| 9:05 a.m. | New Mexico Forest and Watershed Institute
—Dr. Andrew Egan, Director, New Mexico Forest and
Watershed Restoration Institute, New Mexico Highlands
University |
| 9:45 a.m. | Fix a Leak Week
—Miguel Suazo, Wellford Energy Advisors
—Charlie Fricke, Echologics |
| 10:30 a.m. | Lower Rio Grande Stormwater District Proposal
—Speaker TBA |
| 11:15 a.m. | Off-Highway Vehicle Licensing and Regulation
—Tod Stevenson, Director, Department of Game and Fish |
| 12:15 p.m. | Lunch |
| 1:45 p.m. | Levee Task Force Report
—Joe Quintana, Regional Planning Manager, Mid-Region Council of
Governments |
| 2:45 p.m. | Report on Middle Rio Grande Conservancy District Election Options
—Frank Chaves, Director, Environment Department, Pueblo of Sandia |
| 3:45 p.m. | Landfill Permitting Process
—Mark Miller, National Solid Wastes Management Association |
| 4:45 p.m. | Recess |

Tuesday, November 30

9:00 a.m.

Review of Proposed Legislation

- Utton Center and Joe M Stell Ombudsman Program
- Soil and Water Conservation Commission Proposals (2)
- Rural Water Users Association Legislation (2)
- Organic Commodity Commission
- In-State Procurement Preferences (2)
- New Mexico Farmers' Market
- Promote Local/Regional Food Systems
- Water and Wastewater System Assistance
- Adjust Water Rates Without Notice
- Ownership of Pore Space

12:00 noon

Adjourn

MINUTES

**MINUTES
of the
FIRST MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**June 4, 2010
Room 322, State Capitol
Santa Fe**

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Rep. Thomas A. Garcia
Rep. William J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. George K. Munoz
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart

Advisory Members

Sen. Rod Adair
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Nancy Rodriguez
Rep. Jeff Steinborn
Sen. Peter Wirth

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Mary Jane M. Garcia
Sen. Steven P. Neville
Sen. Gerald Ortiz y Pino

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Sen. Cisco McSorley
Rep. Danice Picraux
Rep. Henry Kiki Saavedra
Rep. James R.J. Strickler
Rep. Don L. Tripp

Staff

Jon Boller
Kim Bannerman

Jeret Fleetwood

Guests

The guest list is in the original meeting file.

Friday, June 4

Representative Nuñez began the meeting by having members of the committee and staff introduce themselves.

Improving Efficiency and Possible Restructuring: Working with the Government Restructuring Task Force

Paula Tackett, director of the Legislative Council Service (LCS), provided the committee with a brief overview of the mission of the Government Restructuring Task Force (GRTF), explaining that the GRTF is requesting other legislative interim committees to focus their efforts primarily on examining the programs and missions of the agencies that the committees oversee with an eye toward making those agencies more efficient and by identifying the critical core functions provided by those agencies. Committees should rank the programs vis-a-vis core criticality and provide guidance and recommendations to the GRTF, which is charged with making recommendations for restructuring state government and reporting to the Legislative Finance Committee as it works to prepare the budget for the upcoming year.

Ms. Tackett also noted that the New Mexico Legislative Council had directed staff to develop a calendar that would reduce quorum problems and conflicts among committee meeting dates and to trim the overall number of meeting days for all committees. She pointed out that avoiding all conflicts will not be possible because of the large number of committees and the number of committees on which members have been appointed to serve. Ms. Tackett also noted that national committee appointments had also been taken into consideration in developing the calendar.

Ms. Tackett went on to note that, in an effort to cut down on travel costs for members, legislative staff and other state agencies, the council also directed staff to notify each of the committees that all interim committee meetings be held in the State Capitol this interim unless the committee includes specific justification for traveling out of Santa Fe. The council indicated that it will look very carefully and critically at those requests and only grant them in the rarest of circumstances.

Finally, Ms. Tackett indicated that she will be retiring as of June 11 and thanked the committee members for letting her serve as director of the LCS.

Questions and comments included the following:

- costs associated with state government agencies and legislative staff should be lower by holding meetings in Santa Fe;
- committees should look at how agencies have expanded their services and make recommendations to the GRTF regarding which ones are the most critical to each

- agency's functions and which are less so;
- the GRTF is requesting interim committees to make recommendations by September;
- holding all interim committee meetings in Santa Fe is not a permanent arrangement; and
- there are over 250 boards and commissions associated with New Mexico state government, many of which pay per diem and mileage to their members, which costs the state a significant amount of money.

Status Reports — Office of the State Engineer and Interstate Stream Commission

John D'Antonio, state engineer, provided the committee with an update regarding the operations of the Office of the State Engineer (OSE). He began by noting that the OSE was the only state agency that received the New Mexico Pinon Recognition Award from Quality New Mexico, a nonprofit organization that promotes and congratulates excellence among New Mexico agencies and businesses.

Mr. D'Antonio and Estevan Lopez, director of the Interstate Stream Commission (ISC), went on to provide the committee with updates on several of the major projects involving the ISC or the OSE. They began by discussing the various Indian water rights settlements, noting that pre-construction activities on the Navajo Nation water rights settlement project have already begun. Mr. D'Antonio and Mr. Lopez also discussed the *Taos Pueblo* and *Aamodt* settlements, pointing out that there is a continuing need for state cost-share funding.

Mr. D'Antonio and Mr. Lopez went on to discuss some of the issues regarding the Rio Grande, noting that a credit of 180,000 acre-feet of water had been built up by the end of 2009. They also discussed a new middle Rio Grande biological opinion for the Rio Grande silvery minnow and the southwest willow flycatcher, explaining that while the existing opinion provides for compliance until 2013, reduced water availability, a desire for a program that focuses more on long-term endangered species recovery and the threat of new endangered species litigation suggest that development of a new opinion will need to be developed in the next couple of years.

Mr. D'Antonio and Mr. Lopez then discussed issues regarding the Colorado and the Gila rivers, noting that seven Colorado River Basin states are working to develop drought management strategies and that a Colorado River Basin-wide supply and demand analysis is being conducted.

Mr. D'Antonio and Mr. Lopez also discussed the Strategic Water Reserve, the status of Active Water Resource Management, dam safety and the status of major water litigation in New Mexico.

Questions and comments included:

- the amount of money spent on various lawsuits, settlements and projects;
- that state funding allows the OSE and ISC to leverage significant federal funding, but the state needs to hold up its end of cost-sharing agreements;
- that New Mexico needs to fund existing projects and settlements before beginning

- new ones;
- details of the proposed contract with Intel regarding the transfer of its water rights to the state and New Mexico's resulting obligations to Intel;
- that Intel has acquired about 740 acre-feet of water rights over the past 15 years;
- use of the Strategic Water Reserve for middle Rio Grande endangered species issues;
- the OSE authority to declare critical management areas and where that authority comes from;
- that the Salt Basin aquifer study has been completed, but vast amounts of raw data still must be reviewed;
- the source of funding for the New Mexico Irrigation Works Construction Fund;
- that changing circumstances in some areas require updating regional water plans, some of which are 15 years old;
- the ability of tribes to sell their water rights if no settlement exists;
- law enforcement authority of special masters;
- that the governor has indicated his desire not to use Gila settlement funding for dams or on anything else that may damage the area ecosystem;
- water rights transferred to the state as part of the Intel deal would go to the Strategic Water Reserve for federal Endangered Species Act and compact compliance; and
- that the state has spent about \$70 million to buy land with water rights along the Pecos River as part of the settlement there and received about \$1 million for reselling the land (minus the water rights).

2010 Interim Work Plan, Itinerary and Meeting Schedule

The committee adopted the proposed meeting dates and Santa Fe meeting locations, as well as the proposed work plan with the following amendments:

- discussion of the Industrial Hemp Farming Act;
- update on the terms of the *Aamodt* water rights settlement;
- agricultural trends;
- conservation as it relates to beneficial use of water;
- merger of the Organic Commodity Commission and the New Mexico Department of Agriculture;
- deep well drilling permit process;
- Utton Transboundary Resources Center and Joe M Stell Ombudsman program update; and
- the proposed ISC contract with Intel.

There being no further business, the committee adjourned.

**DRAFT MINUTES
of the
SECOND MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**July 21-22, 2010
Room 322, State Capitol
Santa Fe**

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr. (July 21)
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. George K. Munoz
Sen. Steven P. Neville
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen (July 21)
Sen. Sander Rue

Absent

Rep. Joseph Cervantes
Rep. Thomas A. Garcia
Rep. William J. Gray
Rep. Mimi Stewart

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Nora Espinoza
Rep. Ben Lujan
Rep. James Roger Madalena
Sen. Cisco McSorley
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Jeff Steinborn
Rep. James R.J. Strickler

Sen. Rod Adair
Sen. Carlos R. Cisneros
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Henry Kiki Saavedra
Rep. Don L. Tripp
Sen. Peter Wirth

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 21

Representative Nuñez began the meeting by having members of the committee and staff introduce themselves.

Interstate Stream Commission Proposal for Offset Contract with Intel

Jim Dunlap, chair of the Interstate Stream Commission (ISC), and J. Phelps White, Patricio Garcia and Blane Sanchez, ISC commissioners, introduced themselves. Mr. Dunlap said that Estevan Lopez, director of the ISC, and his staff had advised the commission well over the past seven and one-half years and that the commission looks very closely at the public interest when it considers water policy issues.

Mr. Lopez began by providing the committee with an overview of a proposed contract between the ISC and Intel. He explained that the contract, while somewhat complicated, basically involves the transfer of senior surface water rights from Intel to the ISC in exchange for the ISC assuming some of Intel's obligations to offset the effects of its ground water pumping on the Rio Grande in the future. Specifically, Intel will transfer ownership of 740.9 acre-feet per year of senior surface water rights, pay \$10 million to the ISC and eventually extinguish its license to pump up to 3,248.6 acre-feet of ground water per year in return for the ISC's assumption of Intel's obligation to offset the effects of its ground water pumping. Mr. Lopez went on to explain that the water rights and funds received by the ISC could be used to address federal Endangered Species Act (ESA) of 1973 issues on the middle Rio Grande and for the strategic water reserve. The economic cost-benefit ratio of the agreement is estimated to be between seven-to-one and three-to-one in favor of the state, he noted, with major unquantifiable benefits also accruing to the state. For example, he explained, bringing the river back into balance could help avoid the types of problems and costs the state has experienced on the Pecos River, where the state spent nearly \$100 million to come into compact compliance. This agreement is a step forward in avoiding such problems on the Rio Grande, he said, and will also reduce demand for senior (pre-1907) agricultural water rights that would otherwise have to be transferred to Intel's well.

According to Mr. Lopez, the ISC's offset responsibilities would occur primarily when and if Intel ceases pumping, at which time the ISC would use return flows and the acquired water rights to offset the residual effects of Intel's pumping on the middle Rio Grande Valley and relinquishment credits to offset effects on compact deliveries. The state currently has 180,000 acre-feet of delivery credits with Texas, he said, 80,000 acre-feet of which Texas has agreed to relinquish to New Mexico. This gives New Mexico the right to store up to that amount in upstream storage when needed, he explained, which could then be released as needed to ensure the state's compact compliance. Mr. Lopez noted that from 2001 through 2008, the ISC used

approximately 60,000 acre-feet of credit water and 239,000 acre-feet of relinquishment credits for ESA compliance purposes and drought mitigation. Finally, Mr. Lopez noted that the agreement would improve the competitive position of Intel's Rio Rancho plant relative to its other plants, which will help ensure the plant's viability and keep thousands of jobs in New Mexico.

Frank Robinson, Intel facility operations manager, explained that the Intel plant in Rio Rancho is a manufacturing facility and that the production of microprocessors is both complex and expensive. He emphasized that water is a key part of the manufacturing process at Intel, pointing out that the company has entered into water contracts all around the world and found New Mexico's water laws to be unique. Mr. Robinson went on to note that Intel's motivation to enter into the contract with the ISC was the uncertainty that comes with water rights acquisitions, explaining that the company had been trying to buy surface water rights along the middle Rio Grande for years and only managed to come up with about 740 acre-feet. Mr. Robinson indicated that fluctuations in and the overall high price of middle Rio Grande water rights have created a concern within Intel's management over long-term planning, and this contract goes a long way toward addressing that concern. He also explained that Intel has been exploring other ways of meeting its water obligations and recognizes how economically, environmentally and culturally important that the water rights it already has are, and that it is troubling that these rights will be held for years until they are used for a short period of time. Mr. Robinson concluded by noting that Intel intends to meet its water obligations.

Representative Nuñez recognized several members of the public who wished to speak about the proposed contract.

Eluid Martinez, former state engineer, explained that he was state engineer during the early 1990s, when the original permit between Intel and the state was agreed upon. He indicated that he is well aware of the permit's requirements, pointing out that his issue with the proposed contract is whether the residents of New Mexico should assume the obligations of a private permittee. Mr. Martinez went on to note that acquiring any amount of water rights, from one acre-foot to 1,000 acre-feet, involves a certain amount of process and cost, both of which Intel was aware of when it entered into its original agreement with the state. He estimated that it would likely cost Intel between \$60 million to \$75 million to acquire sufficient water rights in the current market. However, he explained, the company is trying to meet its obligations in a more efficient, less costly manner. Mr. Martinez went on to caution that the residents of New Mexico, via the legislature, could one day be on the hook for the \$60 million to \$75 million if it is decided that relinquishment rights cannot be used for offsets. He praised the ISC for trying to manage the river as best it can and for trying to come up with creative ways of doing so, but he warned that the deal is so complicated and riddled with so many potential problems that it just is not worth the risk.

Dr. F. Lee Brown, a water economist and author of an independent economic analysis of the draft contract, indicated that he was speaking not as an ISC contractor but rather as a water

professional who strongly supports the proposed agreement. He stressed that United States Supreme Court decisions, such as *Colorado v. New Mexico* and *Texas v. New Mexico*, have shown that long-term water analysis and planning are vital and their absence is very costly. In order to avoid a multibillion dollar solution for water problems in the middle Rio Grande, he explained, the state needs to be creative and flexible in how it manages its water. The proposed agreement may help avoid compact noncompliance expenses, such as what happened on the Pecos River.

Steve Hernandez, an attorney representing the Carlsbad Irrigation District and Elephant Butte Irrigation District (EBID), noted that though his clients are not part of the middle Rio Grande, he wonders what kind of precedent the contract would set and whether the ISC could make such deals elsewhere in the state. He also asked whether this would diminish deliveries to the EBID, noting that though he had not studied this possibility, downstream water users always look upstream, and recently downstream users have seen a decline in the amount of water reaching Elephant Butte Reservoir, and they do not know why. Mr. Hernandez also expressed concern about the use of compact credit water in the proposed contract, stating that there may not always be credit water with Texas to rely upon, at which point the contract could become a compact delivery problem.

Steve Harris, of Rio Grande Restoration and a Taos County river rafting guide, discussed the proposed contract in terms of compact delivery issues. He explained that each year is different, but the amount of available water plays out in compact delivery, administration and compact compliance, noting that in 1998 there was not even enough water in the Rio Grande to float a raft. Mr. Harris went on to note that there are many more water rights claims on the Rio Grande than there is available water, and the assumption has been that any shortage will be made up by acquiring water rights from agricultural users, which he indicated would be bad policy. Mr. Harris said he had worked with Think! New Mexico to promote the establishment of the strategic water reserve in 2005, which was designed to mitigate the worst effects of increasing demands on the river. Though it was created with a substantial initial endowment, the current budget crisis has swallowed that up, he explained. The ISC-Intel agreement, he said, will help promote the long-term sustainability of the river at a time when the current water situation offers a chance to be proactive and fix some things before the next drought or endangered species crisis occurs. Mr. Harris noted that the proposed contract represents exactly the kind of innovative and proactive thinking that will help address future compact and supply-and-demand issues.

Bob Wesley, vice president of the Middle Rio Grande Water Assembly, questioned the wisdom of enacting a policy that uses credit water the way the proposed contract does. He said that he thinks that the existing credit is the result of good weather and good management and suggested that it be saved for bad weather years.

Bill Turner, a hydrologist and consultant, indicated that he has filed a number of applications with and lawsuits against the Office of the State Engineer (OSE). He noted that the biggest threat to his many lawsuits is the rejection by the OSE of applications on the grounds that the Rio Grande is already fully appropriated. Mr. Turner said he disagreed, and went on to

discuss the concept of tail water, or water returned to the river by users, which he noted is used by the next person downriver. He explained that all the water in Elephant Butte Reservoir is the tail water from upstream users, but that much of that water evaporates in the reservoir because poor management practices allow for the storage of Texas' water there. Mr. Turner offered that there really is no shortage of water in the Rio Grande Basin, and that changes in management and gauging will help fix many water demand issues. He also indicated that water law in New Mexico is not actually broken, but its rules are not always followed. Mr. Turner also said that while endangered species in the river do need to be protected, farmers and other users need to be protected, too.

Kristina Gray Fisher, associate director of Think! New Mexico, praised the proposed contract, noting that it could help avoid the types of compact delivery lawsuits with Texas that New Mexico faced on the Pecos River. Ms. Fisher explained how, five years ago, Think! New Mexico had worked closely with Representative Joe M Stell on creating the strategic water reserve and how difficult it has been since then to get either funding or acquire water rights for the reserve. The proposed contract would help with funding, she noted, as well as provide hard-to-come-by water rights into the strategic water reserve. Ms. Fisher said that she also supports the proposed agreement in part because she would prefer to see 2,500 acre-feet of water rights remain in the hands of agricultural users in the middle Rio Grande rather than be bought by Intel, used for seven years and then sold to the highest bidder, which would certainly not be agricultural users.

Janet Jarrett, chair of the Middle Rio Grande Conservancy District Board, expressed concern over the ISC's plan to store credit water above Elephant Butte Reservoir, as well as the notion that credit water is really just "paper" water rather than "wet" water. She went on to note that another concern raised by agricultural water users is the potential for the ISC to be able to modify the offset plan without notice by the OSE. Ms. Jarrett went on to explain that no one will know the full impact of the contract for some time and that there are simply too many unanswered questions about the contract to be able to support it.

Steven Curtis, an Albuquerque water lawyer, discussed water disputes in other states, explaining that there are basically two ways to move water between states: compact agreements and supreme court lawsuits. He went on to note that compacts really only govern the delivery of water from state to state, rather than the administration of water within a state's boundaries. Mr. Curtis indicated that the constitution of New Mexico governs the administration of water within the state, and he questioned whether the ISC is given the authority to store water in El Vado Reservoir or any other upstream reservoir.

Interstate Stream Commissioner White noted the overall complexity of the contract and said that the commission has also found it difficult to keep up with the legal and hydrological jargon in the contract, particularly because the commission is mostly composed of laypeople. However, Mr. White said that while he could not speak for the commission as a body, he does not see any downside to the contract, he thinks it would be a good thing for New Mexico as a whole and that, as a representative from the middle Pecos Valley, he sees no risks to the Pecos

River water users.

The committee had a lengthy question-and-answer session regarding the proposed contract.

Some members expressed concern over the perception that the ISC feels it owns the water in New Mexico's rivers and reservoirs and that credit water should be available for appropriation. Mr. Lopez explained that the ISC does not own relinquishment rights; rather, the state does and the ISC simply manages those rights in order to meet New Mexico's compact delivery obligations and for drought mitigation and ESA compliance. Credit water, he said, is not subject to private appropriation; otherwise, all the state would have left is water debt with no credit to pay it. As for the use of relinquishment rights to offset Intel's pumping, Mr. Lopez explained that he disagrees with Mr. Martinez's statement that this is risky because the contract provides that if the offset plan is not approved by the OSE, the deal is off.

Other members asked about the concerns raised regarding a lack of public input on the contract. Mr. Lopez explained that approval of the contract is only the beginning of a lengthy process involving three separate OSE processes: transfer of the water rights into Intel's wells, submission of an offset plan by the ISC and Intel to the OSE and joint filing of an application with the OSE to change the purpose and place of use of the water rights. He pointed out that those processes each call for a number of meetings and that public comment will be solicited at each meeting.

Members of the committee also asked about a recent newspaper article that suggested that Intel's water rights return flow credits may actually be the property of the Albuquerque-Bernalillo County Water Utility Authority. Mr. Lopez explained that the ISC had researched that issue and that the agreement between Intel and the Albuquerque-Bernalillo County Water Utility Authority is fairly clear. He explained that since 1995, the City of Albuquerque and later the Albuquerque-Bernalillo County Water Utility Authority have been treating Intel's wastewater return flows and discharging them to the Rio Grande, and that agreements executed between the two entities in 1993 and 1994 provide Intel with the rights to all the return flow credits corresponding to how much water it discharges. Jay Stein, an attorney representing the Albuquerque-Bernalillo County Water Utility Authority, also discussed the agreement between Intel and the Albuquerque-Bernalillo County Water Utility Authority, explaining that the agreement states that Intel "may" receive the return flow credits. He indicated that the Albuquerque-Bernalillo County Water Utility Authority did not necessarily agree to permanently treat Intel's water and never actually waived its claim on the credits.

Asked what would happen on the Pecos River if the state were faced with that situation today, Mr. Lopez replied that the Pecos River settlement was only possible because of the amount of money available to the state at the time. Speaker Lujan explained that a more contentious settlement, and eventual agreement, would likely be less feasible in the current budget environment, which may make proactive action more sensible. However, he also pointed out that Pecos River settlement funding was approved yearly by the legislature, which provided the

legislative branch with enough oversight to make that branch feel comfortable.

Speaker Lujan expressed concern about future contracts that might not provide the legislature with sufficient oversight. He noted that while the contract under review might indeed put the state in a better position, a standard for similar contracts may eventually have to be established. Speaker Lujan also asked about Intel's commitment to the contract and, specifically, whether Intel would remain committed to New Mexico if the ISC or the legislature sought to postpone the agreement pending more information. Mr. Robinson indicated that Intel is committed to a certain point but is free to eventually walk away from the contract.

Representative Madalena noted that he was a member of the Sandoval County Commission that originally negotiated Intel's contract. He pointed out that Intel promised increased, and higher-paying, employment for county residents once Intel established operations in the area. However, he expressed doubt about whether the company had actually followed through on its promises and whether New Mexico could count on Intel to keep its word.

Representative Bandy asked why the continued presence of Intel is not being emphasized, which he thinks is very important to the state, and how this agreement will benefit Intel. Mr. Robinson replied that the company had invested \$5 billion in the existing plant, and certainly had the resources to buy up water rights, but that the company is not good at the water business. Intel's management would rather focus on making chips than on the water market.

Representative Egolf asked whether the risk to middle Rio Grande water users would be greater without this deal because the burden of ESA obligations will fall on farmers if the state does not come up with the water. Mr. Lopez said that because San Juan Chama water will no longer be available to cover ESA obligations and a new biological opinion is due in 2013, it will be more difficult to meet demands in the future.

Several members of the committee expressed concern that the contract could wind up in court no matter what the OSE and the legislature may decide. Mr. Lopez and several other individuals explained that some of the issues raised by the proposed contract could be challenged in court no matter how the issue at hand turns out.

Senator Griego pointed out that a number of steps must be followed before the current agreement is implemented. He indicated that a number of questions remain unanswered or unresolved, and that while some questions might be regarded as irrelevant, legislators still reserve the right to ask them and still may exert some influence over the agreement. He suggested that stakeholders continue to work toward an agreement that most users can agree to and can understand.

Representative Begaye asked about the involvement of tribal and pueblo entities in the proposed contract. Mr. Lopez indicated that while a number of meetings had been held regarding the contract, several of them involving tribal representatives, Native American stakeholders have not expressed support or opposition to the contract yet. Mr. Lopez noted that, should the contract

move forward, several more opportunities exist for public and tribal representatives to weigh in on the proposed contract.

Senator Michael S. Sanchez questioned the perceived rush by the ISC to approve and implement the contract, explaining that while the involved parties may have been negotiating the contract for some time, the public has enjoyed much less time to review the agreement. Senator Sanchez suggested that the ISC and Intel provide the legislature, the public and stakeholders more time to review the contract before moving forward with it.

Deep Well Permitting Process and Aquifer Mapping

John D'Antonio, state engineer, provided the committee with testimony regarding deep well permitting, explaining that there are 40 existing ground water basins in New Mexico and that determining if there is a hydrologic connection between deep aquifers and shallower aquifers in those basins will be an ongoing project. Only eight wells, three of which are natural gas wells, have been drilled into deep aquifers so far, mostly in Sandoval County, he said. He noted that his office is still working to develop definitions of deep wells and the permitting procedure itself and that there is still some work remaining on what defines brackish water. Mr. D'Antonio said he is totally supportive of the aquifer mapping budget at the New Mexico Institute of Mining and Technology (NMIMT).

Peggy Johnson, associate director of hydrogeologic programs for the Bureau of Geology and Mineral Resources at the NMIMT, explained that aquifer mapping is a multidisciplinary science involving geologic mapping, drill hole data, geophysical surveys, three-dimensional mapping, hydrogeologic data, geochemical data and ground water flow models. Ms. Johnson went on to discuss some of the active and completed aquifer mapping projects, as well as planned projects. Ms. Johnson described some of the work that has been conducted in the Santa Fe area, Taos, the Sacramento Mountains and Albuquerque's West Mesa area.

Questions and comments from the committee included the following:

- only one permit application has been filed since the deep well permit law took effect in 2009, although a number of applications were filed during the session that produced the law;
- the Coleman Ranch area forest thinning project will begin this year, and the effects of the thinning on the aquifer will be monitored for about 18 months;
- NMIMT has data from more than 60,000 wells across the state, including core and cutting samples from many of those wells;
- there is a need to interpret all the data that have been collected so that the data may be used by policymakers to begin making decisions;
- there almost always seems to be some connection between deep and shallow aquifers; it remains to be seen whether this will affect the approval of deep well permits;
- focus of the NMIMT work has tended to be on shallower aquifers rather than the deeper ones; and
- New Mexico's aquifer mapping technology is state-of-the-art, but other states are a little further ahead on geographic content.

***Aamodt* Settlement Update**

Mr. D'Antonio and DL Sanders, chief counsel for the OSE, provided the committee with an update regarding the *Aamodt* water rights settlement. They offered a brief overview of the settlement's history and an update on the status of the agreement, explaining that attempts to move the federal authorizing language by unanimous consent had been unsuccessful. Mr. D'Antonio noted that the next best chance for passage would probably come in fall 2010.

John Utton, an attorney for Santa Fe County, noted that he was one year old when the *Aamodt* settlement first began. He explained that the settlement as currently constituted is the result of a great deal of compromise on the parts of the involved parties. Mr. Utton pointed out that while none of the parties likes all aspects of the current agreement, most recognize that it is good for Pojoaque Valley residents and that Santa Fe County supports it. He also noted that the current agreement is likely to be the only chance to have the federal government build the water system proposed by the settlement, with local and state governments paying only the relatively small costs of upsizing the system. Without the settlement, he explained, there would be no imported water into the valley and no agreement on how to satisfy the water claims of the most senior water users in the region. The parties fought about this issue from 1966 to 2000 without coming to an agreement, he noted.

John Gunning of the Pojoaque Basin Water Alliance noted that Pojoaque water users and other affected parties had been involved in a number of meetings with the OSE, but that many people continued to oppose the settlement because they felt the part of the settlement involving non-Indian water users had not been studied enough. He went on to note that the settlement calls for the Pueblos of Tesuque and Pojoaque to operate the water system, which may not allow for sufficient transparency. Mr. Gunning emphasized that most water users really do want to follow the rules, and while they do not actively oppose the *Aamodt* settlement, they do not support it, either.

Dick Rochester, president of the Pojoaque Basin Water Alliance, suggested that some of the people pushing the settlement forward may have put the cart before the horse in trying to win local support for the project before securing federal approval and funding. He also said that he feels that many of the numbers in the federal legislation are wrong and include target dates that cannot be met.

Projected Costs of Current and Planned Water Projects and Programs

Mr. D'Antonio and Mr. Lopez provided the committee with information regarding the big-ticket budget items involving the OSE and ISC. They noted how much money had already been appropriated for each project, the anticipated state and federal costs for each project and the state share of the projects per year for the next 10 years. For example, Mr. D'Antonio explained that about \$31.2 million had been appropriated to date for Indian water rights settlements, with the anticipated state costs to run between \$50 million and \$112 million, anticipated federal costs running between \$757.5 million and \$775.4 million and the state costs per year running between

\$3.4 million and \$9.7 million over the next 10 years. Mr. D'Antonio and Mr. Lopez provided the committee with the same type of information for each of the Indian water rights settlements: Navajo, Taos, *Aamodt* and the Indian Water Rights Settlement Fund. They also provided the committee with cost information for other major projects, such as the Ute Pipeline, the Pecos settlement, the Gila settlement and the Middle Rio Grande ESA Collaborative Program.

Thursday, July 22

Representative Nuñez reconvened the meeting at 9:10 a.m.

Government Restructuring Reports — Department of Environment and Energy, Minerals and Natural Resources Department

Jim Noel, secretary-designate of the Energy, Minerals and Natural Resources Department (EMNRD), provided the committee with testimony regarding a questionnaire issued by the Government Restructuring Task Force (GRTF) to other state government entities. He began by providing the committee with an overview of the EMNRD, noting the department's mission, goals, various divisions and the number of employees working in each division. Secretary-Designate Noel also pointed out the number of vacant positions in each division, noting that the department is currently averaging about an 11% vacancy rate. He went on to detail each vacancy and discuss those positions that had been eliminated from House Bill 2 during the 2010 session. Secretary-Designate Noel then discussed the operating budget for the EMNRD as a whole and its various divisions, as well as the grants and special funds that pass through the department.

Secretary-Designate Noel then provided the committee with division-by-division answers to the following GRTF questions:

- What options have been explored or are under consideration by your agency to become more efficient and cost-effective in the face of a continuing decline in revenue? Please report all possible options, including programmatic, fiscal and contractual modifications.
- What technological changes could be instituted to make the agency more effective and efficient?
- Can changes be made to the agency's procurement/contracting services to save money?
- Is a program outdated, and can a major, or minor, overhaul of that program create a more efficient and effective state government?
- Is the program better suited to another government level (e.g., municipalities, counties, school districts) or is it a program that should not be provided by the public sector?
- Could the services be provided more effectively by another state agency?
- Can some programs be consolidated with others to save on administrative costs?
- Is there a new revenue source that should be examined for a program?

Secretary-Designate Noel listed several steps that the EMNRD has already taken to become more efficient, and he identified those areas where increased fees may be helpful. For example, he noted that an increase in state park fees is long overdue and pointed out that moving

toward electronic and paperless permits might help the department operate more efficiently at less cost to taxpayers.

Ron Curry, secretary of the Department of Environment (NMED), also provided the committee with testimony regarding the questionnaire issued by the GRTF. He explained that the NMED is driven by its budget and that much of the department's overall budget comes from either federal funding in the form of grants or specific appropriations or enterprise funding generated by departmental functions such as permit and inspection fees. Secretary Curry pointed out that only 16% of its operating budget comes from general fund appropriations and that the NMED's general fund revenues are actually smaller than they were in 2002. He also explained that while much of its overall budget comes from federal agencies, particularly the Environmental Protection Agency, those funds are dedicated to specific functions and may not be used for any other purpose.

Secretary Curry went on to discuss issues regarding the NMED permitting process. He indicated that the department emphasizes transparency and public participation throughout the permitting process. Secretary Curry explained that a permit is, in essence, a license to pollute and that the NMED issues or denies permits based on the amount of control it has over the proposed pollution.

Secretary Curry also discussed realignment issues as they relate to the NMED. He indicated that some steps had already been taken to realign and consolidate functions within the department. Secretary Curry explained that while realignment and consolidation efforts may eventually realize long-term benefits, they often result in a certain amount of short-term inefficiency. For example, he noted that while NMED bureau chiefs had been shuffled in between 2003 and 2004, the department was only beginning to enjoy the benefits of the realignment.

Finally, Secretary Curry discussed the emphasis that the NMED has placed on improving water quality in New Mexico, explaining that much of the work the department does has at least some impact on water quality, which is why the department tries to view much of its continuing mission through the prism of water quality.

The committee expressed interest in the Oil Conservation Division (OCD) of the EMNRD and the rule it promulgated regarding oil and gas wells, known as the "pit rule". Mark Fesmire, director of the OCD, explained that the pit rule was enacted to limit the potential pollution that oil and gas wells present to the ecosystem surrounding drilling sites. He noted that the rule requires environmental protections, such as specific liners, to be placed around the drilling site. Mr. Fesmire went on to address concerns that the pit rule has had a direct impact on the oil and gas industry in New Mexico, explaining that the OCD maintains statistics on the number of oil and gas rigs operating in the state. He pointed out that the number of active wells in New Mexico appeared to correlate with the price at which oil and gas traded in financial markets, noting that implementation of the pit rule appeared to have less effect on the number of wells than price fluctuations. Mr. Fesmire also noted that while the New Mexico oil and gas industry tends to

blame the pit rule for lost revenue, the rule also serves to protect oil and gas well operators by limiting their exposure to the kinds of catastrophic incidents recently witnessed in the Gulf of Mexico, which ultimately saves oil and gas companies money.

Some members of the committee questioned Mr. Fesmire's conclusions, indicating that as the price of oil has rebounded, the number of oil and gas wells has increased more significantly in some states than it has in New Mexico. They acknowledged that while price does seem to drive oil and gas well development, additional state regulations may steer some companies to states featuring less regulation.

Questions and comments from the committee included the following:

- proposals to merge the NMED and the EMNRD would likely cause short-term inefficiencies and may not yield any long-term benefits;
- the number and nature of the thousands of permits issued by the NMED seem to make it more of an enforcement agency;
- recent efforts by the Association of Commerce and Industry to remove the Environmental Improvement Board (EIB) and the Water Quality Control Commission (WQCC) from statute;
- the value of the EIB and the WQCC as checks on the power of the secretary of environment, whose rulings the boards have the authority to overturn;
- Pecos Canyon State Park, although statutorily authorized by the legislature, is currently not operating because sufficient funding for park staff was not authorized by the legislature;
- while there are a number of boards and commissions attached to the NMED, Secretary Curry identified the EIB and the WQCC as the most important;
- state agencies should have been using technology to streamline their functions all along; and
- most of the low-hanging fruit associated with making state government more efficient has already been harvested; the difficulty lies in the next round of decisions.

On a motion made, seconded and unanimously approved, the minutes of the June 2010 meeting were approved as submitted.

Government Restructuring Report — OSE

Mr. D'Antonio provided the committee with testimony regarding a questionnaire issued by the GRTF to various state government entities. Mr. D'Antonio responded to specific questions asked by the task force and responded to questions from the committee.

Questions and comments from the committee included the following:

- the OSE has already made significant cuts to its operating budget, with further cuts likely to affect core functions, given that the office currently is operating with 60 vacant positions;
- overall vacancies in the OSE are at about 15% to 16%, with some, but not all, vacant positions not funded by the legislature during the 2010 session;

- receipt by the OSE of the Piñon Award is noteworthy;
- difficulty in online posting of legal briefs relating to applications filed with the OSE is the result of a lack of available resources at the OSE;
- continued diligence on Indian water rights settlements is important because missed deadlines could result in collapse of the settlements;
- the importance of continuing to offer technical assistance to acequias, particularly because similar assistance remains available to similar entities, such as mutual domestic water cooperatives; and
- ditch metering and water masters in certain areas are important because they ensure no one is overdiverting or illegally diverting water, although all parties involved are still learning how best to use them.

There being no further business, the committee adjourned at 12:05 p.m.

**MINUTES
of the
THIRD MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**August 30-31, 2010
Barbara Hubbard Room, Pan American Center Annex
New Mexico State University
Las Cruces**

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Thomas A. Garcia
Rep. William J. Gray (August 30)
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Mimi Stewart

Absent

Sen. George K. Munoz
Sen. Gerald Ortiz y Pino
Sen. Sander Rue

Advisory Members

Sen. Vernon D. Asbill (August 31)
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Ben Lujan (August 30)
Sen. Cisco McSorley
Sen. Nancy Rodriguez (August 31)
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn
Rep. Don L. Tripp

Sen. Rod Adair
Rep. Nora Espinoza
Rep. Candy Spence Ezzell
Sen. Dede Feldman
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. James Roger Madalena
Rep. Danice Picraux
Rep. James R.J. Strickler

Guest Legislators

Rep. Andrew J. Barreras (August 31)
Rep. Nathan P. Cote (August 30)
Rep. Mary Helen Garcia
Rep. Rodolpho "Rudy" S. Martinez (August 30)

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, August 30

Representative Nuñez began the meeting by having members of the committee introduce themselves.

Welcome and Opening Remarks

Barbara Couture, president of New Mexico State University (NMSU), welcomed committee members to Las Cruces and thanked them for coming. She provided the committee with a brief history of the university and an overview of the various water-related programs with which the school is involved. She also discussed her vision for the future of NMSU, such as working to better connect research programs with economic development opportunities. Also presented to the committee was a video highlighting the various programs involving NMSU.

Arizona Water Settlements Act Gila River Update

Martha Schumann and Topper Thorpe, co-chairs of the Arizona Water Settlements Act Stakeholders Group, provided the committee with an update regarding the progress made by the group. They noted that a conceptual project list has been developed, along with a web site providing interested parties with up-to-date information on the workings of the stakeholders group. However, Ms. Schumann and Mr. Thorpe indicated that additional state funding is necessary for the stakeholders group to finish its work because federal dollars will not be available until 2012. In particular, both Mr. Thorpe and Ms. Schumann emphasized the need to fund the communications coordinator and web site, noting that the stakeholders group is already in arrears in paying its communications director.

Vance Lee, chair of the Gila-San Francisco Water Commission, explained that the commission is committed to diverting Gila River water and keeping it in New Mexico. He went on to note that the commission is reviewing the list of projects developed by the Arizona Water Settlements Act Stakeholders Group in order to make its recommendations to the Interstate Stream Commission (ISC). Mr. Lee pointed out that the Gila-San Francisco Water Commission includes representatives from four area counties. He also suggested that because the Arizona Water Settlements Act awards water to New Mexico, it makes sense to try to keep that water in New Mexico.

Howard Hutchinson, also of the Gila-San Francisco Water Commission, emphasized that the Arizona Water Settlements Act addresses a region-wide issue of significant importance. He also pointed out that there are notable differences between the commission, which is mostly composed of elected officials, and the stakeholders group, which solicits input from all interested parties. He also indicated that decades of planning regarding water resources in the region have yielded relatively little field work, and that the area's watersheds are in poor shape.

Craig Roepke of the ISC testified that the planning process continues to move forward and that the ISC anticipates the recommendations from both planning groups.

Questions and comments included the following:

- conceptual projects range from small solar projects to large-scale structures such as diversion and storage sites;
- the settlement allocates \$66 million for any purpose and could include an additional \$62 million for approved projects;
- current funding for studies and stakeholders group meetings has come from the state;
- funding needs for additional planning depend on the recommendations made by the two planning groups;
- the Gila-San Francisco Water Commission is composed mostly of representatives from soil and water conservation districts and local government representatives, while the Arizona Water Settlements Act Stakeholders Group includes any interested parties;
- the time line and deadlines for decisions and project funding; and
- the ISC makes the final decisions on recommended projects.

Conservation of Water and Agricultural Water Use

John Longworth of the Office of the State Engineer (OSE) and Dr. Zohrab Samani of NMSU explained how the application of different conservation practices may or may not result in the creation of transferable water rights in the agricultural sector. They began by explaining that the consumptive use of water, commonly measured by the amount of evapotranspiration that occurs for a given crop, in essence determines the amount of depletions in a stream system attributable to the growing of that crop. Increasing the efficiency of the delivery method to a crop will decrease diversions and corresponding return flows to the system, but may increase crop yield and evapotranspiration, resulting in an overall decrease in water returning to the system and an increase in depletions to the system, they noted. In this case, they explained, there would be no saved water to transfer to another user. This is the challenge in a water-short environment, Dr. Samani explained, because crops often do not receive enough water at the optimum time and actual use is less than the potential use for a given crop. Better delivery methods may help the individual farmer in getting higher yields per acre, but do not necessarily free up water for others to use. Mr. Longworth pointed out that the transfer of any conserved water pursuant to Section 72-5-18 NMSA 1978 would have to be done annually on a farm-by-farm basis, which would require a corresponding increase in staff to oversee the program.

Tessa Davidson, a water attorney, commented that water depletions occur from use, while seepage and evaporation are separate matters. She said that while conserved water may not exist

as a recognizable right, she thinks there could be savings that could be put to other uses.

Adjudications Status Update

Greg Ridgley, OSE, provided the committee with an overview of the OSE's efforts to adjudicate water rights in New Mexico. Mr. Ridgley said there are currently 12 active adjudications, six in state court and six in federal court, with a total of 72,081 defendants. He explained that reduced staffing levels within the agency, particularly with regard to legal staff, are delaying the process somewhat, noting that the Adjudications Program has a 30% vacancy rate for fiscal year 2010. The Adjudications Program also has a \$708,000 shortfall in its projected 2010 budget. A more focused deployment of the OSE's somewhat limited resources, he explained, has nonetheless kept the process moving along. Mr. Ridgley also noted that the OSE met with state and federal court judges for a working session under Rule 71.3 in August to help coordinate the hearing process and resource allocation of the active adjudications.

Judge James J. Wechsler of the New Mexico Court of Appeals provided the committee with an update on adjudication efforts with regard to the judiciary branch. He explained that the courts felt that the adjudication process could be made more efficient by making small changes to the process used by the courts. Judge Wechsler said that representatives from New Mexico had visited other states to see what worked there, noting that assigning one judge to an adjudication proceeding seemed to work well. He indicated that he had been appointed to preside over four adjudications: the San Juan, Pecos, Santa Fe and Rio San Jose.

Judge Wechsler went on to discuss adjudication of the San Juan River, explaining that completion of subfiles in the first area to be settled is underway, with *inter se* underway in the next section and determination of the water rights of the Navajo Nation to follow.

Next, Judge Wechsler discussed adjudication of the Upper Pecos River, explaining that the Gallinas section of the river is moving forward well.

Celina Jones of the Administrative Office of the Courts also discussed the significance of the lessons learned during recent adjudications. She explained that focusing on the procedures associated with adjudications, such as use of electronic records and implementation of a new case management system, and ensuring that the public has access to as much information as possible, are keys to streamlining the adjudication process without making major changes to the underlying principles governing it.

Questions and comments included the following:

- about 1% of subfile offers are challenged in a hearing;
- the OSE attempts to settle the non-adversarial cases first, but even simple cases can take time;
- initial components of an adjudication involve a determination of rights offer from the OSE to a claimant; negotiation of that offer; and acceptance or challenge of that offer;
- an ideal OSE budget, regardless of financial realities, would require waiving the hiring freeze in effect for executive agencies;

- improvement of the adjudication process, while essentially a policy decision, would emphasize retention of institutional knowledge and communication with stakeholders and the public; and
- the use of certain historical records in adjudications and the potential problems associated with such records.

Lower Rio Grande Adjudication Update

Judge Jerald A. Valentine of the Third Judicial District provided the committee with an update regarding adjudication of the Lower Rio Grande. He explained that there are currently several stream system issues that the court is hearing and that he has issued orders laying out how such issues should be handled by the court. Asked if he thinks it is realistic to have one judge handling four adjudications, Judge Valentine replied that he thinks this underestimates the amount of work that goes into the adjudication process.

Laurie Knowles, OSE, also discussed adjudication of the Lower Rio Grande. She emphasized the value of negotiation to the overall process. Ms. Knowles also pointed out that the substantial amount of technical and scientific data available from NMSU and local government entities has been particularly helpful in settling claims. She went on to note that mediation is also a constructive instrument in adjudications, but she emphasized that the process does not allow the OSE to negotiate another user's water rights away from them. Ms. Knowles informed the committee that currently there are only two lawyers representing the state in the Lower Rio Grande adjudication. She also noted that the Joe M Stell Ombudsman Program has been an unqualified success in helping smooth the adjudication process, and she urged the legislature to continue to fund the program in the upcoming session.

Lower Rio Grande Public Water Works Authority Issues

Martin Lopez and Karen Nichols of the Lower Rio Grande Public Water Works Authority outlined the process the authority has taken to implement the provisions of House Bill 185 (2009), which requires the merging of five mutual domestic water consumer associations in Dona Ana County. Ms. Nichols explained that a number of challenges have arisen in setting up the authority, most of which have been resolved with the help of Rick Martinez, Robert Apodaca, Ron Curry, John D'Antonio and Annette Morales.

Ms. Morales of the Colonias Initiative highlighted the economic development opportunities that the authority offers, pointing out that economies of scale would save customers money while better infrastructure could help attract new schools and developers to the area.

Mr. D'Antonio, state engineer, pointed out that the project is in line with the emphasis the OSE has placed on regionalization of water systems. He acknowledged that there are still some policy issues that need to be worked out, but he noted that policies are steadily being put into place.

Mr. Lopez explained how matters such as standardization of billing software and digital records of customer information still need to be resolved. Mr. Lopez also pointed out that

equipment such as radio-controlled water meters and security upgrades are planned. He emphasized that the authority was designed as a water system, and would operate as such, incurring debt rather than relying solely on state and federal grants.

Several members of the audience expressed concern over the authority. They said that there is a lack of transparency and communication within the authority. They also indicated that not all of the communities served by the authority are included in the decision-making process.

Other members of the audience noted that using the Albuquerque-Bernalillo County Water Utility Authority as a blueprint for the Lower Rio Grande Public Water Works Authority created some problems, as approaches that work in Bernalillo County and Albuquerque do not seem to work as well in Las Cruces and surrounding rural communities.

Tuesday, August 31

Proposal on Regional Flood Control Authority

Joe Delk, president of the Dona Ana Soil and Water Conservation District, provided the committee with some background on the need for a regional flood control authority. He explained that there are nearly 100 flood control dams in the watershed, many of which are over 50 years old. In addition, Mr. Delk noted that the proliferation of subdivisions and unincorporated communities in the area has changed the dynamic, and that many residents in those areas are currently unprotected from flood dangers because the dams were built to protect agricultural land. He indicated that meetings had been held on the issue and several governmental entities in the region are considering entering into a memorandum of understanding to explore the possibility of creating a regional flood control authority. Mr. Delk acknowledged that this would be a big undertaking, and he emphasized the need to get started quickly.

Cliff Terry of the South Central New Mexico Stormwater Management Coalition also discussed the flooding issues in the area. He began by providing the committee with photographs of recent Dona Ana County floods and their aftermath, pointing out that a tremendous amount of silt is carried by floods, which necessitates a significant cleanup effort. Mr. Terry went on to explain that while the region has a number of identified water needs, one particular need is to design flood control infrastructure from a watershed perspective. For example, he noted that street storm water drains would help prevent flood water from entering the river during storms to help stay within the river channel's flood conveyance capacity. Mr. Terry also suggested:

- building regulating reservoirs to store flood water for release later, when it can be put to beneficial use;
- installing pumping systems with large precast culverts to carry off storm water;
- lining storm drainage channels;
- building artificial aquifer recharge systems to carry arroyo water to underground storage; and
- maintain existing infrastructure to ensure that it operates properly and does not fail during floods.

Brian Heines, Dona Ana County manager, explained that while most of the dams in the area were originally built to protect agricultural lands, they are now old and sited above developed land. He suggested that capturing and storing storm water could help provide water to the region.

Gary Esslinger of the Elephant Butte Irrigation District (EBID) emphasized the importance of water in the area, noting that the EBID is facing water shortfalls this year. He suggested that storm water could be used to help irrigate in southern New Mexico. Mr. Esslinger went on to explain that area flood control dams need to be rehabilitated, particularly because they are now surrounded by communities.

Michael Johnson, Las Cruces Public Works director, explained that in 1970, the Las Cruces Metropolitan Arroyo Flood Control Authority built the large flood control dam east of the city, which was paid for by a property tax increase to residents of the city. Mr. Johnson noted that the tax is still in place and that the city is using that revenue to develop and implement an updated flood master plan. He pointed out that the new plan allows for identification of problem areas and building flood control infrastructure within the city to meet the needs of expansion. Mr. Johnson went on to indicate that the city has concerns regarding the creation of a regional flood control authority that includes the existing flood control authority and the impact it will have on city residents. He also noted that while the city will not relinquish the current levy it imposes, there are concerns about imposing additional taxes on city residents for a new flood control authority that will fund projects outside of the city limits. Mr. Johnson explained that an agreement that clearly delineates the city's requirements would have to be negotiated before the city considers participating in the memorandum of understanding supporting the creation of a new flood control authority.

Questions and comments included the following:

- whether it is necessary to amend the New Mexico Subdivision Act to address building houses below unsafe dams;
- the necessity of involving the state engineer and the Department of Environment (NMED) in the planning process;
- the challenge of getting cooperation among the various entities that would have to pay for the proposed flood control authority;
- the need to address the concerns of the City of Las Cruces before any legislation is proposed;
- the legal problem of diverting or appropriating water without a state permit, considering that the state did not sign off on the EBID's 2008 agreement with Texas;
- if the EBID claims ownership of runoff and stored flood waters, who gets to decide how the proposed flood control authority taxes the public?;
- whether the project will take into consideration environmental concerns; and
- who is currently responsible for maintaining the existing dams.

New Mexico Rural Water Association Legislative Proposals

Matthew Holmes, executive director of the New Mexico Rural Water Association, and

Clarence Aragon, president of the New Mexico Rural Water Association, provided the committee with an update on the activities of the association and two legislative proposals the association is supporting. In particular, they provided the committee with a proposed bill that would include employees of the New Mexico Rural Water Association in the Public Employees Retirement Association and another bill that would make mutual domestic water consumers associations eligible for wastewater facility construction loans.

Questions and comments included the following:

- issues regarding the NMED and the Public Project Revolving Fund;
- the NMED provided the New Mexico Rural Water Association with a one-day notice that its contract was still in place but that no more funding for safe drinking water projects would be made available;
- the New Mexico Rural Water Association is trying to help its members get some funding through the New Mexico Finance Authority;
- some associations can make up the funding shortfalls through fees, but many smaller systems are in trouble;
- whether funding for water improvement projects may also be used for wastewater projects;
- the association frequently pays for system operator training to ensure that operators are well-qualified;
- differences between water well sharing, public water systems and mutual domestic water associations;
- the New Mexico Rural Water Association is funded mostly by fees from its members, but it will provide assistance to anyone who requests it;
- the New Mexico Rural Water Association's operational funds are getting smaller and smaller, and the association lost money last year;
- asset management training for members is just getting underway;
- membership fees for the association are tiered, with members who have a small number of connections paying less than those with a larger number of connections;
- while the association is losing members, it is rare that members leave because they are dissatisfied with the service; and
- most members of the association leave because they simply cannot afford membership fees.

Representative Nuñez asked that the legislative proposals of the association be submitted to the committee at its November meeting. On a motion made, seconded and passed, the minutes of the July 21-22, 2010 meeting were approved as submitted.

Off-Highway Motor Vehicle Act Administration

Tod Stevenson, director of the Department of Game and Fish (DGF), provided the committee with an update regarding the Off-Highway Vehicle (OHV) Program. He explained that officer training is underway, with the New Mexico Law Enforcement Academy providing training and certification. Mr. Stevenson noted that a lack of funding did not allow for more hands-on training programs, but that online training is now available. He went on to indicate that

there are over 102,000 registered off-highway machines in New Mexico.

Mr. Stevenson then explained that his department needs some additional direction from the legislature on the proper use of the Trail Safety Fund, as there have been questions about whether it is appropriate to use that fund to promote OHV use in New Mexico and its associated tourism. He acknowledged that such a use was not anticipated by the original statute.

David Chester, OHV program manager, also discussed the training program and law enforcement with the committee. He explained that the law emphasizes enforcement and safety, and that a hotline has been implemented. Mr. Chester noted that information gleaned from the hotline is used to help prioritize enforcement efforts. He indicated that common violations include no registration and no child safety equipment.

Mr. Chester went on to explain that display of license plates is an issue, but that switching to a decal system should help law enforcement officers. He also noted that safety training is available at various events and online, and that an ethics component has been added to the training.

Questions and comments included the following:

- what the process is for training and displaying proof of training for OHV users under 18;
- the ATV Safety Institute coordinates the training, but it only has 10 instructors;
- some interest has been expressed by OHV dealers in training, but the ATV Safety Institute is a private organization that conducts its own training;
- progress has been made on ranching and grazing allotments by the DGF;
- the need for adequate public notice of DGF board meetings;
- training courses are offered in multiple states, and Colorado's training course is recognized by New Mexico, but Colorado does not yet recognize New Mexico's permits;
- the hotline is promoted through press releases, business cards and advertisements; and
- Senator Griego asked that the DGF come to the October meeting to address concerns expressed about elk permits by a Mr. Martinez and other issues affecting landowner permits.

The committee adjourned at 12:47 p.m.

**MINUTES
of the
FOURTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**October 18-19, 2010
Room 322, State Capitol
Santa Fe**

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy
Rep. Ray Begaye
Rep. Joseph Cervantes
Rep. Thomas A. Garcia (October 18)
Rep. William J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Dona G. Irwin
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy (October 18)
Sen. George K. Munoz
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Mimi Stewart (October 18)

Advisory Members

Sen. Vernon D. Asbill
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr.
Rep. Nora Espinoza
Rep. Candy Spence Ezzell (October 19)
Sen. Dede Feldman
Sen. Timothy Z. Jennings (October 18)
Rep. Ben Lujan (October 18)
Rep. James Roger Madalena (October 18)
Sen. Cisco McSorley
Sen. Nancy Rodriguez
Rep. James R.J. Strickler
Rep. Don L. Tripp (October 19)
Sen. Peter Wirth

Absent

Sen. Mary Jane M. Garcia
Sen. Steven P. Neville

Sen. Rod Adair
Sen. Gay G. Kernan
Rep. Danice Picraux
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Monday, October 18**Water Trust Board Report**

John D'Antonio, state engineer, began by offering a brief explanation of the Water Trust Board's history, mission, makeup and ongoing projects, pointing out that the board oversees three separate funds that may be used for statewide water projects: the Water Trust Fund, the Water Project Fund and the Acequia Project Fund. Mr. D'Antonio went on to explain that while each fund derives income from separate, defined sources, all three exist to provide financial assistance for water projects. He indicated that while the board and its funds are mostly focused on water infrastructure projects, legislation passed during the 2005 session also dedicates 10 percent of all the money that goes into the Water Project Fund to the water rights adjudication process, with 20 percent of that amount going to the Administrative Office of the Courts for the courts' costs associated with those adjudications. However, Mr. D'Antonio explained, the funding for adjudications flowing to the Office of the State Engineer (OSE) has supplanted general fund appropriations to the office, and, therefore, there has not been increased funding for adjudications.

For 2010, the Water Project Fund received distributions from the Severance Tax Permanent Fund in the amount of \$29.6 million, plus \$4 million from the Water Trust Fund, according to Mr. D'Antonio. Loans and grants for projects authorized by the legislature and awarded in 2010 totaled \$31.5 million. He added that since 2002, 90 entities across the state have received approval for 195 funding awards totaling \$198 million.

Next, Mr. D'Antonio detailed the process used by the board to determine whether or not a project is funded, and if so, at what level. He also provided the committee with an overview of the various projects approved for funding by the board relative to their location in the state.

Regional Water Plan Update

Angela Bordegaray, senior water planner for the Interstate Stream Commission (ISC), and Estevan Lopez, ISC director, provided the committee with an overview of the statewide regional water planning process. Ms. Bordegaray began by reviewing the regional water planning process, pointing out that public meetings are an important part of the overall process. She emphasized the importance of water planning, and she explained that the first state water plan was completed in 2003 and was updated in 2008. Since then, she said, her office has held 22 public meetings aimed at updating the 16 regional plans and incorporating them into the state plan. However, she emphasized that constantly evolving conditions means that the plans need to be updated frequently in order to continue to be useful. Updating plans on a continuing basis, she noted, would take dedicated annual funding. She said she hopes to complete incorporation of regional plan data into the state water plan in December.

Questions and comments included:

- whether integration of regional and state water plans occurs often enough to be useful in policy planning;
- templates were sent to each region, but responses used that template in markedly different ways, and one of the challenges facing planners now is revision of the data contained in each region's response;
- water management strategies in some regions have changed more than others; for instance, the regional plan for the lower Pecos River was completed before the

- settlement between various stakeholders on the river was negotiated and implemented;
- the plan for southwestern New Mexico does contemplate the Central Arizona Water Projects Settlement and the effect that settlement may have on administration of water on the Gila River, but it will have to be updated once the planning process is complete;
- there is a water shortage in the Ruidoso area, and the Mescalero Apache Tribe has proposed leasing some of its water rights to Ruidoso; however, that water is already being used, and therefore only the priority date, not the amount of water being used, would change; and
- while Bonito Lake may be geographically closer to Ruidoso, its water rights are already owned by Alamogordo, so that water is not available to address Ruidoso's water issues.

The committee asked Mr. Lopez for an update on the proposed contract between the ISC and Intel. Mr. Lopez acknowledged that because some committee members expressed concern about the proposed contract, the ISC voted to postpone approval of the contract indefinitely and address those concerns before further action is taken. Accordingly, he said, the ISC is developing proposed guidelines to show how the ISC will handle compact credits. Mr. Lopez also noted that one of the biggest concerns is what process would be required for obtaining approval of the terms of the proposed agreement. The state engineer, he said, will require the ISC to go through the water rights permitting process.

Utton Transboundary Resources Center and Ombudsman Program Update

Susan Kelly, director of the Utton Transboundary Resources Center, provided the committee with an overview and update on the history, mission and projects involving the center. She began by explaining that the center had recently been reorganized and now falls under the purview of the Institute for Public Law. Ms. Kelly went on to discuss the various initiatives in which the center is involved, pointing out that one of the major legislative goals of the program is to be recognized in statute. She also noted that the center publishes the "Water Matters" handbook and is developing literature exploring the intertwining of water and land use policy. Ms. Kelly also pointed out that the center has been researching international water use issues and plans to produce a guide to model water rights legislation, which may help other border states develop policies on international water policy.

Darcy Bushnell, program director for the Joe M Stell Water Ombudsman Program, provided the committee with an overview of her program. She explained that the program was established to help those parties with adjudications that had not retained legal representation. Ms. Bushnell noted that the program's resources are focused primarily on the lower Rio Grande adjudication, but it also is working on the San Juan, *Aamodt* and Animas Valley adjudications.

Ms. Bushnell then went into more detail regarding the Animas Valley adjudication. She explained that the adjudication could help serve as a model for future proceedings, particularly in the Middle Rio Grande Basin, because nearly 80 percent of the water rights in the area were already licensed by the OSE. Ms. Bushnell also discussed outreach efforts on the Animas Valley adjudication, pointing out that her program had focused its efforts on contacting those claimants

who had recently been contacted by the OSE. She pointed out that the ombudsman program employs a number of methods to help claimants, ranging from multimedia productions outlining the process to hosting public meetings and workshops. Ms. Bushnell indicated that the ombudsman program works closely with the OSE and the Administrative Office of the Courts.

Ms. Bushnell went on to discuss two other adjudications involving the ombudsman's program, the *Aamodt* and Navajo settlements. She noted that contact with small groups of people affected by the settlements allowed participants to voice their particular concerns.

Soil and Water Conservation Commission Proposals

Larry Wynn, chair of the Soil and Water Conservation Commission (SWCC), outlined the role that soil and water conservation districts (SWCDs) play in protecting the state's natural resources, and he stressed the need for consistent and predictable funding for the work the districts do. He suggested that identifying and dedicating funding to resource conservation would protect New Mexico's natural resources from ideological shifts among lawmakers.

To illustrate his point, Mr. Wynn pointed out that hundreds of dams had been constructed across New Mexico over the past 50 years. He acknowledged that while those dams may have enabled growth in many communities, most had languished without maintenance for decades and now constitute a threat to a number of communities. To complicate matters, Mr. Wynn indicated that while ownership of and responsibility for most of those dams was debatable, the matter had mostly been thrust upon SWCDs, most of which could not afford to maintain the dams.

Mr. Wynn went on to explain that possible liability for downstream developments from such dams could result in significant financial responsibility for the SWCDs in New Mexico and that a predictable, dependable funding stream is needed to address maintenance and liability issues.

Jose Varela-Lopez, SWCC member, presented the committee with proposed legislation revising the appointment of SWCC members. He explained that the changes would allow for better representation from the various SWCDs in the state and better cooperation with the New Mexico Department of Agriculture. He also presented a proposal for a permanent funding source for the SWCC and SWCD projects.

Questions and comments included:

- whether the changes proposed by Mr. Varela-Lopez would actually result in more diversified representation on the SWCC;
- how the current process for disbursement of funds to each district goes through the New Mexico Department of Agriculture and New Mexico State University;
- whether the governor must pick a name from those submitted or if the governor can send the list back;
- exactly how much money is appropriated to SWCDs for various purposes;
- how the proposal to revise the appointment of SWCC membership originated with the commission, rather than the districts themselves;

- allowing increased autonomy of boards and commissions lessens the legislature's prerogative to appoint boards and commissions;
- the Coronado SWCD is responsible for the dam located above the town of Bernalillo, and the Risk Management Division of the General Services Department has begun charging dramatically increased premiums to most SWCDs;
- confusion over ownership and responsibility for flood control dams, particularly because not all dams are the responsibility of local SWCDs;
- whether SWCC members should be confirmed by the senate;
- disputes over the certification of and fiscal agent for SWCD projects; and
- qualifications for audits of state subdivisions.

Industrial Hemp Production

Gloria Castillo, New Mexico Industrial Hemp Coalition, provided the committee with an overview regarding industrialized hemp. She began by emphasizing the fundamental differences between industrial hemp and marijuana. Ms. Castillo went on to explain that commercialized hemp presents a viable economic opportunity for domestic producers, noting that hemp products produced outside of the U.S. already enjoy a small, robust market that shows significant potential for growth. To illustrate, Ms. Castillo provided the committee with a number of hemp products, emphasizing that while most of them are sold in domestic stores, state and federal regulations prohibit the growing, processing and sale of domestic hemp.

To illustrate further the difference between industrial hemp and marijuana, Dr. Daniel Manuchia, Greenveld Foundation of New Mexico, provided the committee with evidence of the chemical composition of each. He went on to emphasize that in a number of other countries, industrial hemp is being cultivated, much of which is being imported into the U.S. as part of the products shown to the committee. Dr. Manuchia also noted that enough research had already been conducted to acknowledge that various strains would likely perform better in certain climates and that only a little research would be required to identify a strain that would flourish in New Mexico.

Questions and comments included:

- industrial hemp tends to compare very favorably to other domesticated crops in terms of yield per acre;
- harvest methods still need some development, but much of the required research has already been conducted;
- the process to develop hemp strains and land use policies that maximize the crop's potential will take some time;
- the major difference between marijuana and industrial hemp centers on THC content, with hemp's content being exponentially lower;
- U.S. demand for hemp products totaled approximately \$325 million in 2008;
- legislative committees can help by submitting letters to the U.S. attorney general urging support for hemp-related research projects;
- legislation authorizing the cultivation of industrial hemp is being considered by several other states; and

- federal law supersedes tribal sovereignty, making hemp cultivation illegal on tribal lands, too.

Buckman Direct Diversion Project Status

Rick Carpenter, project manager of the Buckman Direct Diversion Project, Brian Snyder, public utilities director for the City of Santa Fe, and George Rael, environmental programs manager for the Los Alamos Office, provided the committee with an overview of the Buckman Direct Diversion Project. They explained that construction of the project began in late 2008 and is about 92 percent complete. They also thanked the committee for its work on HM 21 (2010), which they said helped the parties come together to resolve the remaining issues on the project.

Mr. Carpenter, Mr. Snyder and Mr. Rael went on to discuss the various monitoring systems incorporated into the project, particularly those that focus on runoff originating in canyons that may contain pollutants produced by Los Alamos National Laboratory. The group provided the committee with an overview of the various monitors designed to detect pollutants in runoff flows that may pose health risks to downstream water users.

Questions and comments included:

- the water quality sampling system is operational and did pick up contaminants that were well below accepted standards;
- the total cost of the diversion project is about \$200 million;
- the project benefits Los Alamos and Santa Fe in that it allows for cessation of ground water pumping, which has often exceeded allowable levels;
- most of the diverted water is sampled and analyzed, then treated if necessary;
- water is tested both for contaminants listed in the federal Clean Water Act and some contaminants specifically related to laboratory activities;
- grade control structures have been installed above the project to catch most of the sediments that can contaminate water; and
- intake valves can be shut off if large storms that can wash excessive amounts of sediment or other contaminants are in the area, but it has not been necessary so far.

Environmental Flow Proposal

Steve Harris of Rio Grande Restoration provided the committee with testimony regarding the New Mexico Environmental Flows Project. He explained that a study on the impacts of hydrologic alteration on New Mexico's rivers is currently underway and that a technical team had already been assembled. Mr. Harris went on to note that various stream and river flows are being monitored for factors, such as flow timing, magnitude and rate of change. He also discussed the types of questions he hopes the study would help answer, such as whether changing the timing of the annual spring runoff floods might actually foster growth in non-native species and how important channel maintenance is to overall river health.

Mr. Harris went on to explain that while the report called for in House Joint Memorial 3 (which passed the house, but not the senate, during the 2009 regular session) would probably be available in October 2011, a larger four-year study that hopes to leverage federal funding is also

underway.

Questions and comments included:

- the goal of the study is not necessarily to suggest going back to rivers without dams, but rather to suggest that storing water using better science may help rivers function more like they did before dams;
- similar issues have been contemplated in Colorado; and
- changing the timing of compact delivery flows may help return rivers to a more natural state.

The committee recessed at 4:00 p.m.

Thursday, October 19

St. Augustin Plains Water Issues

Eileen Dodds, a Socorro County landowner, provided the committee with testimony regarding an application by an area landowner to drill 37 deep water wells near the border between Socorro and Catron counties. She explained that there are about 905 wells in the St. Augustin watershed, most of which are used by ranchers and all of which may go dry if the wells are approved. Ms. Dodds went on to note that the ranching, farming and tourism industries, and much of the wildlife, in the area will also likely expire once the shallower wells dry up.

Ms. Dodds and area landowners Anita Hand-Gutierrez and Lin Kennedy urged the committee, and the legislature as a whole, to consider legislation:

1. for the protection of surface and subsurface waters within the state for current use and for the use of all future generations with an emphasis on long-term sustainability;
2. to limit interbasin transfers;
3. to close the practice of automatic approval of the drilling of domestic wells. They should require an impact statement, too;
4. prohibit the mining of the deep aquifers statewide by requiring the proponents of this drilling to demonstrate that any and all waters extracted are in excess of the area's future needs;
5. to restrict commercial and residential development until the proponents can prove they have the long-term water allotment necessary to support growth and to prevent developers from "borrowing" for future development from today's finite resources;
6. to consider the effect on public welfare in rural areas and protect the rights of all New Mexicans to have the sustainable use of clean water; and

7. to provide oversight of the OSE process for hearing appeals from the residents of New Mexico.

Questions and comments included:

- the proposed well permits list numerous proposed uses for the water, including pumping it to the Rio Grande for use in compact deliveries;
- the aquifer in question goes as deep as 3,000 feet, but it begins much closer to the surface in some spots;
- the aquifer appears to be connected to surface water;
- the average depth of most existing wells in the area is between 200 feet and 300 feet;
- the application was originally filed in 2007 by the listed landowner, an Italian corporation;
- exploratory well permits are available from the OSE to determine water location and quality, but then another permit must be approved for use of the water; and
- the relative unlikelihood of the permits being approved as they are written.

Bruce Frederick of the New Mexico Environmental Law Center also discussed the proposed wells with the committee. He explained that the New Mexico Environmental Law Center already represents a number of protestors. Mr. Frederick explained that the permits seek to appropriate nearly 54,000 acre-feet of water, yet there is no end user listed in the application. As such, this is a speculative appropriation, which is counter to New Mexico law. He referenced a Colorado case that made a similar speculative application but had no end use.

Organic Commodity Commission

Theresa Connaughton, chair of the Organic Commodity Commission, provided the committee with an overview of the commission's mission and current situation. She explained that the commission is tasked with ensuring compliance with National Organic Program standards by businesses and operations desiring to be certified as United States Department of Agriculture (USDA) organic and to act as the certifying agent for USDA organic-designated businesses and operations in New Mexico. Ms. Connaughton went on to summarize the makeup, staff and funding issues associated with the commission, noting that estimates suggest that it will cost \$80,000 more than the program has received from the general fund and fees in FY11. She also pointed out that the program does not have a director or chief financial officer and lacks sufficient managerial and administrative support due to budget cuts. General fund appropriations fell from \$280,000 to \$25,000, she explained. Finally, Ms. Connaughton addressed a proposal to merge the Organic Commodity Commission with the New Mexico Department of Agriculture, noting that it would integrate some agricultural disciplines and would likely yield administrative efficiencies.

Questions and comments included:

- there is no direct link between the commission and local farmers' markets, and while certified organic products must be inspected, markets can sell all types of products;
- there are 205 certified organic operations in New Mexico;
- currently, fees and assessments produce about \$150,000 annually;
- total sales of organic products in New Mexico amount to about \$60 million, although it is

difficult to determine what percentage of that amount comes from sellers who have been certified by the commission;

- a reasonable increase in fees would bring in about \$225,000 per year; and
- total costs to operate the program are approximately \$305,000.

Agricultural Issues and Game Permits

Caren Cowan of the New Mexico Cattlegrowers' Association briefed the committee on several issues concerning the association. She began by explaining that a sportsmen's coalition was recently formed to work with the Department of Game and Fish on hunting-related issues. Ms. Cowan indicated that agreements were recently reached regarding most of the association's concerns, noting that landowner permit rules for antelope were modified, bear and cougar management efforts were addressed by changing the dates for those hunts and a moratorium was placed on wolf trapping in the Gila Wilderness area for everyone but landowners.

Ms. Cowan went on to explain that the hearings regarding designation of outstanding natural resource waters in New Mexico had recently concluded, with the association being on record during those hearings should it desire to appeal any decision. She also noted that the Department of Game and Fish had recently indicated that it will help manage elk herd issues.

Questions and comments included:

- professional trappers may not trap wolves in the Gila Wilderness area while the moratorium is in effect;
- the agreement regarding landowner antelope permits involves the switching of permits between ranches that do and do not have antelope on them; and
- the director will recommend the change to the State Game Commission, which plans to meet soon.

The E-File Program, Elk Permits and Game Management Unit Boundaries

Tod Stevenson, director of the Department of Game and Fish, and Jim McClintock of the State Game Commission provided the committee with an update regarding several issues. Mr. Stevenson began by noting that there are continuing concerns over a number of department actions, such as the July redrawing of the boundary between two Jemez subunits and rule changes regarding elk permits. He also noted that some small landowners continue to create problems for the department, and that while a task force has been assembled to address some issues, the department's staff has been so overwhelmed by antelope issues that recommendations have not yet been made to the commission.

Mr. Stevenson went on to note that he appreciates the formation of the sportsmen's coalition because it helps maintain a dialogue between the department and interested groups and helps reach compromises. He did point out that some compromises still demand a significant amount of time.

Mr. Stevenson then discussed the landowner system for certain hunting permits, indicating that the department intends to recommend keeping that component of the system intact. He

acknowledged that many sportsmen will not like such a decision, but the department simply could not devise a way to make a straight public draw for permits to work. Mr. Stevenson noted that while the current system is somewhat skewed toward landowners, it does provide an opportunity for other sportsmen to obtain a permit while still encouraging landowners to keep wildlife on their property and compensating them for the damage that wildlife causes.

Mr. Stevenson also discussed the designation of outstanding natural resource waters in New Mexico, questioning the claim by some groups that such a designation will help manage elk herds. He noted that the department will likely be forced to do more elk herd management in order to stay in compliance with the designation.

Finally, Mr. Stevenson discussed the ban on wolf trapping in the Gila Wilderness. He explained that while a significant number of people have approached the involved government agencies on the issue of wolves, there simply are not very many wolves in the wild. Mr. Stevenson indicated that the ban was addressed in an executive order, but it is limited to U.S. National Forest lands. He also noted that the department is currently seeking help in completing some of the studies called for in the executive order.

Mr. McClintock discussed the State Game Commission's decision to redraw the 6A-6B subunit boundary in the Jemez. He explained that when the boundary was first changed, many hunters wandered into the wrong parcels of land because they had no way of telling where the boundaries were. Mr. McClintock noted that the commission voted unanimously to put the boundary back to its previous location, and the new boundary is posted on the Department of Game and Fish's web site.

Mr. McClintock also discussed the E-File Program, explaining that most antelope in the state are on private property. He noted that the program allowed for a total of 5,000 permit conversions: 1,800 for the public and 3,200 for landowners, which would allow for almost 350 additional opportunities for the public to shoot an antelope. Mr. McClintock acknowledged that the program is not where it needs to be yet, but the commission continues to work with all the stakeholders to develop a solution.

Questions and comments included:

- compensation for wolf damage requires a 50/50 funding match from the state, and the department hopes to take its share of the funds from a new funding source;
- the department is working with the U.S. Fish and Wildlife Service to improve the compensation program;
- there are stringent requirements regarding what can and cannot be compensated;
- problems arise when the same approach to a game and fish problem is applied statewide because what works in one area may not work in another;
- the importance of compensating landowners for wildlife damage because those landowners take care of the wildlife most of the time;
- issues related to a grant proposal involving a Luna County landowner and his attempts to reduce interaction between wildlife and livestock;
- the amount of money claimed and paid to landowners for wolf damages varies but seems smaller this year compared to last year;

- the zebra mussel program seems to be working well, as several infested boats were stopped and cleaned at the border; and
- a microscopic positive has turned up at Sumner Lake, but it is too early to tell if it presents a problem or not.

The committee adjourned at 12:15 p.m.

MINUTES
of the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE

November 29-30, 2010
Room 307, State Capitol
Santa Fe

Present

Rep. Andy Nuñez, Chair
Sen. Phil A. Griego, Vice Chair
Rep. Paul C. Bandy (11/29)
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia (by phone)
Rep. Thomas A. Garcia (11/29)
Rep. William J. Gray
Sen. Clinton D. Harden, Jr.
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. George K. Munoz (11/30)
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Sen. Sander Rue

Advisory Members

Sen. Vernon D. Asbill
Rep. Anna M. Crook
Rep. Brian F. Egolf, Jr. (11/30)
Rep. Candy Spence Ezzell
Sen. Dede Feldman (11/29)
Rep. Ben Lujan (11/30)
Rep. James Roger Madalena (11/29)
Sen. Cisco McSorley
Rep. Danice Picraux (11/29)
Sen. Nancy Rodriguez
Rep. James R.J. Strickler
Rep. Don L. Tripp

Guest Legislators

Rep. Miguel P. Garcia
Rep. Dennis J. Roch (11/29)

Sen. Rod Adair

Absent

Rep. Dona G. Irwin
Sen. Steven P. Neville
Rep. Mimi Stewart

Sen. Carlos R. Cisneros
Rep. Nora Espinoza
Sen. Timothy Z. Jennings
Sen. Gay G. Kernan
Rep. Henry Kiki Saavedra
Rep. Jeff Steinborn
Sen. Peter Wirth

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller
Kim Bannerman
Jeret Fleetwood

Minutes Approval

Because the committee will not meet again this year, the minutes of this meeting have not been officially approved by the committee.

Monday, November 29

New Mexico Forest and Watershed Restoration Institute

Dr. Andrew Egan, director, New Mexico Forest and Watershed Restoration Institute (NMFWRI), explained that the NMFWRI is one of three institutes chartered under the federal Southwest Forest Health and Wildfire Prevention Act of 2004, which was enacted in response to catastrophic fires in the western states. Dr. Egan noted that the NMFWRI has been engaged in nearly 100 projects across New Mexico and the southwest and that it provides practical knowledge and technical assistance in forest and woodland restoration to reduce the threat of catastrophic wildfire and to restore healthy and sustainable forest ecosystems. The program is funded on both state and federal levels, with three and one-half full-time-equivalent employees funded by the state, he said. Dr. Egan described several projects the NMFWRI is working on, including the development of restoration-based businesses and jobs in partnership with the Alamo Navajo community and the facilitation of partnerships and collaboration with soil and water conservation districts, land grants, local governments and state and federal agencies to reduce the threat of wildfires and improve watershed health on public and private lands in the state.

Fix a Leak Week

Miguel Suazo, Wellford Energy Advisors, and Charles Fricke, Echologics, noted that there are over 240,000 water main breaks in the United States annually, and that the vast majority of leaks go undetected, which results in up to 30% of the water being lost in water systems. Mr. Suazo went on to describe leak detection technology that uses sound to determine the location of leaks without the necessity of digging up pipes. The technology, he said, costs about \$30,000, which includes training in the use of the equipment. He urged the committee to promote federal legislation to fund leak detection programs throughout the United States.

The committee approved the minutes of the October meeting without objection.

Off-Highway Vehicle Licensing and Regulation

David Chester, head of the Off-Highway Vehicle (OHV) Program for the Department of Game and Fish, outlined the program and rule changes that have been adopted to implement the changes in laws governing OHV use and licensing. Major changes include new rules on the placement and display of identification plates or decals on OHVs, implementation of online safety

training programs and various outreach and grant programs. Mr. Chester noted that there has been a significant increase in compliance with OHV rules; for example, he said, out-of-state OHV users increased compliance from between 40% to 50% to between 80% to 95%.

Levee Task Force Report

Joe Quintana, regional planning manager for the Mid-Region Council of Governments, reported that the Mid-Rio Grande Levee Task Force held quarterly meetings over the past year concerning issues raised by the committee at its last meeting of the 2009 interim. Those issues included whether the Federal Emergency Management Agency (FEMA) would be moving toward a more risk-based standard for the issuance of flood insurance; the possibility of changing vegetation standards for levees to avoid having to remove trees from the bosque in the Corrales and Albuquerque areas; whether economic impact and cost-benefit studies will be done to help determine if any or all of the levees and spoil banks need to be rebuilt; and what sources of funding for projects could be expected from federal sources, local government bodies tasked with flood control or levee maintenance and state agency sources.

Janet Jarratt, chair of the Middle Rio Grande Conservancy District (MRGCD) board, said that the FEMA is moving toward a risk-based management model for flood insurance and that a study on the vegetation variance issue is forthcoming in December. She also reported that there has been a delay in construction of levees to replace existing spoil banks in the middle Rio Grande.

Deb Foley, United States Army Corps of Engineers, said that the corps must do an economic analysis of projects, which must produce at least \$1.00 in benefits for every \$1.00 spent, and that there must be an independent external peer review of all projects. As for the funding of projects, she reported that the corps is currently operating under a continuing resolution, so there is no budget for 2011 as yet. Current cost-sharing arrangements for the various proposed projects range from a 50% to 75% federal share, depending on the project, she noted.

MRGCD Election Options

Frank Chavez, environment director for the Pueblo of Sandia, briefly outlined the preliminary findings of a task force that was established, pursuant to a request in Senate Memorial 21 (2010), to come up with alternatives to the present election procedures for the MRGCD. Mr. Chavez said there are 19 members on the task force and that they hoped to have a final report to submit to the committee and the legislature sometime in December.

Landfill Permitting Process

Mark Miller and Keith Gordon, National Solid Waste Management Association, and Marline Foyer, Waste Management, Inc., requested the committee to support legislation that would give privately owned landfills the same 20-year permits for which public sector landfills are eligible. Ms. Foyer noted that other than the permit renewal process, public and private sector landfills are subject to the same regulations and that having to renew a permit every 10 years unnecessarily increases costs to the consumer. Representatives from the New Mexico Municipal League and the New Mexico Association of Counties expressed support for the proposal, while Doug Meiklejohn of the New Mexico Environmental Law Center said he opposes it.

Tuesday, November 30

Proposed Legislation for the 2011 Legislative Session

The committee reconvened at 9:15 a.m. on Tuesday, November 30, 2010, to consider endorsement of legislation. The committee endorsed the following pieces of legislation:

- a bill to create the Utton Transboundary Resources Center and the Joe M Stell Water Ombudsman Program at the University of New Mexico School of Law;
- a bill amending the Wastewater Facility Construction Loan Act to include mutual domestic water consumers associations in the definition of "local authority". Enactment of the bill would make mutual domestic water consumers associations eligible to receive financial assistance for the installation and operation of wastewater facilities;
- a bill expanding the scope of in-state purchasing preferences by state and local government agencies;
- a bill to appropriate \$85,000 to the New Mexico Department of Agriculture to promote and develop the state's farmers' markets; and
- a house joint memorial recognizing that revitalization and development of local and regional food systems are critical to promoting the health, well-being and economic vitality of rural and underserved urban communities.

The committee failed to endorse the following proposed legislation:

- a bill appropriating \$1.7 million for soil and water conservation district programs;
- a bill requiring senate approval of appointees to the Soil and Water Conservation Commission;
- a bill making employees of mutual domestic water consumers associations eligible for public employee retirement;
- a bill requiring state and local agencies that purchase food to purchase a certain amount of food that is either produced or processed in New Mexico;
- a bill that would establish a fund to assist small water and wastewater systems to pay for certified operators, administration expenses and connection expenses to connect to other systems;
- a bill to allow a public utility to increase rates without hearings if the increase is necessary to cover the costs of water rights purchases; and
- a bill providing for the ownership and conveyance of pore space.

The committee adjourned at 12:15 p.m.

**ENDORSED
LEGISLATION**

SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE UTTON TRANSBOUNDARY
RESOURCES CENTER AT THE UNIVERSITY OF NEW MEXICO; CREATING THE
JOE M STELL WATER OMBUDSMAN PROGRAM WITHIN THE UTTON
TRANSBOUNDARY RESOURCES CENTER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 21, Article 7 NMSA
1978 is enacted to read:

"[NEW MATERIAL] UTTON TRANSBOUNDARY RESOURCES CENTER--JOE
M STELL OMBUDSMAN PROGRAM.--

A. The "Utton transboundary resources center" is
created at the university of New Mexico school of law.

B. The purposes of the center are to:

(1) promote policies for the equitable and
sustainable management of water and other transboundary natural

resources and reduce conflict over the use of those resources;

(2) provide information, expertise, research and education to the public and the legal community about water-related policies and legal issues, including the water rights adjudication process; and

(3) coordinate with the university of New Mexico school of law and other academic institutions and programs in providing its services.

C. The "Joe M Stell water ombudsman program" is created within the Utton transboundary resources center. The program shall provide unrepresented parties in water rights adjudications with informational and educational assistance regarding the adjudication process.

D. The center may receive appropriations from the legislature through the board of regents of the university of New Mexico and may receive gifts, grants, donations and other support from public or private sources.

E. The center may operate as part of or in conjunction with other programs, centers or institutes established by the university of New Mexico school of law."

SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE WASTEWATER FACILITY
CONSTRUCTION LOAN ACT TO INCLUDE MUTUAL DOMESTIC WATER
CONSUMERS ASSOCIATIONS IN THE DEFINITION OF "LOCAL AUTHORITY".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 74-6A-3 NMSA 1978 (being Laws 1986,
Chapter 72, Section 3, as amended) is amended to read:

"74-6A-3. DEFINITIONS.--As used in the Wastewater
Facility Construction Loan Act:

A. "administrative fee" means a fee assessed and
collected by the department from a local authority on each loan
and expressed as a percentage per year on the outstanding
principal amount of the loan, payable by the borrower on the
same date that principal and interest on the loan are due, for
deposit in the clean water administrative fund;

.182609.1

1 B. "commission" means the water quality control
2 commission;

3 C. "division" or "department" means the department
4 of environment;

5 D. "financial assistance" means loans, the purchase
6 or refinancing of existing local political subdivision
7 obligations, loan guarantees, credit enhancement techniques to
8 reduce interest on loans and bonds, bond insurance and bond
9 guarantees or any combination of these purposes;

10 E. "fund" means the wastewater facility
11 construction loan fund;

12 F. "local authority" means any municipality,
13 county, incorporated county, mutual domestic water consumers
14 association, sanitation district, water and sanitation district
15 or any similar district, recognized Indian tribe or other
16 issuing agency created pursuant to a joint powers agreement
17 acting on behalf of any entity listed in this subsection;

18 G. "operate and maintain" means to perform all
19 necessary activities, including replacement of equipment or
20 appurtenances, to ensure the dependable and economical function
21 of a wastewater facility in accordance with its intended
22 purpose;

23 H. "wastewater facility" means a publicly owned
24 system for treating or disposing of sewage or wastes either by
25 surface or underground methods, including any equipment, plant,

1 treatment works, structure, machinery, apparatus or land, in
2 any combination, that is acquired, used, constructed or
3 operated for the storage, collection, reduction, recycling,
4 reclamation, disposal, separation or treatment of water or
5 wastes or for the final disposal of residues resulting from the
6 treatment of water or wastes, such as pumping and ventilating
7 stations, facilities, plants and works, outfall sewers,
8 interceptor sewers and collector sewers and other real or
9 personal property and appurtenances incident to their use or
10 operation. "Wastewater facility" also includes a nonpoint
11 source water pollution control project as eligible under the
12 Clean Water Act;

13 I. "account" means the wastewater suspense account;

14 J. "board" means the state board of finance;

15 K. "bonds" means wastewater bonds or other
16 obligations authorized by the commission to be issued by the
17 board pursuant to the Wastewater Facility Construction Loan
18 Act;

19 L. "Clean Water Act" means the federal Clean Water
20 Act of 1977 and its subsequent amendments or successor
21 provisions;

22 M. "federal securities" means direct obligations of
23 the United States, or obligations the principal and interest of
24 which are unconditionally guaranteed by the United States, or
25 an ownership interest in either of the foregoing;

.182609.1

1 N. "force account construction" means construction
2 performed by the employees of a local authority rather than
3 through a contractor;

4 O. "holders" means persons who are owners of bonds,
5 whether registered or not, issued pursuant to the Wastewater
6 Facility Construction Loan Act;

7 P. "issuing resolution" means a formal statement
8 adopted by the board to issue bonds pursuant to the Wastewater
9 Facility Construction Loan Act, including any trust agreement,
10 trust indenture or similar instrument providing terms and
11 conditions for the bonds to be issued; and

12 Q. "recommending resolution" means a formal
13 statement adopted by the commission recommending to the board
14 that bonds be issued pursuant to the Wastewater Facility
15 Construction Loan Act, including any trust agreement, trust
16 indenture or similar instrument providing the terms and
17 conditions for the bonds that are issued."

underscored material = new
[bracketed material] = delete

SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE AND
THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO PROCUREMENT; MODIFYING THE PREFERENCE ADVANTAGE FOR
IN-STATE BUSINESS; CHANGING THE DEFINITIONS OF "RESIDENT
BUSINESS" AND "RESIDENT CONTRACTOR"; CHANGING THE PROCESS FOR
OBTAINING CERTIFICATION AS A RESIDENT BUSINESS OR RESIDENT
CONTRACTOR; ELIMINATING PREFERENCES FOR RESIDENT MANUFACTURERS,
NEW YORK STATE BUSINESSES AND RECYCLED CONTENT GOODS; PROVIDING
PENALTIES; REPEALING SECTION 13-1-21.2 NMSA 1978 (BEING LAWS
1997, CHAPTER 1, SECTION 1 AND LAWS 1997, CHAPTER 2, SECTION
1).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 13-1-21 NMSA 1978 (being Laws 1979,
Chapter 72, Section 1, as amended) is amended to read:

"13-1-21. APPLICATION OF PREFERENCES.--

A. For the purposes of this section:

.182573.6

1 (1) "business" means a commercial enterprise
2 carried on for profit, including growing, producing, processing
3 or distributing agricultural products for profit;

4 (2) "public body" means the executive,
5 legislative and judicial branches of state and local
6 governments, the New Mexico finance authority, the New Mexico
7 mortgage finance authority, the New Mexico renewable energy
8 transmission authority, the New Mexico exposition center
9 authority, the New Mexico hospital equipment loan council,
10 entities on state-owned land and all agencies or entities
11 created by the constitution of New Mexico or any branch of
12 government that receives public funding, including political
13 subdivisions, home rule municipalities, special taxing
14 districts, school districts and institutions of higher
15 education; and

16 (3) "resident business" means a [New Mexico
17 resident business or a New York state business enterprise]
18 business that has a valid resident business certificate issued
19 by the state auditor pursuant to Section 13-1-22 NMSA 1978.

20 [~~(2) "New Mexico resident business" means a~~
21 ~~business that is authorized to do and is doing business under~~
22 ~~the laws of this state and:~~

23 ~~(a) that maintains its principal place~~
24 ~~of business in the state;~~

25 ~~(b) has staffed an office and has paid~~

1 applicable state taxes for two years prior to the awarding of
2 the bid and has five or more employees who are residents of the
3 state; or

4 (c) is an affiliate of a business that
5 meets the requirements of Subparagraph (a) or (b) of this
6 paragraph. As used in this section, "affiliate" means an
7 entity that directly or indirectly through one or more
8 intermediaries controls, is controlled by or is under common
9 control with the qualifying business through ownership of
10 voting securities representing a majority of the total voting
11 power of the entity;

12 (3) "New York state business enterprise" means
13 a business enterprise, including a sole proprietorship,
14 partnership or corporation, that offers for sale or lease or
15 other form of exchange, goods or commodities that are
16 substantially manufactured, produced or assembled in New York
17 state, or services, other than construction services, that are
18 substantially performed within New York state. For purposes of
19 construction services, a "New York state business enterprise"
20 means a business enterprise, including a sole proprietorship,
21 partnership or corporation, that has its principal place of
22 business in New York state;

23 (4) "resident manufacturer" means a person who
24 offers materials grown, produced, processed or manufactured
25 wholly in the state; provided, however, that a New York state

1 ~~business enterprise shall be deemed to be a resident~~
2 ~~manufacturer solely for the purpose of evaluating the New York~~
3 ~~state business enterprise's bid against the bid of a resident~~
4 ~~manufacturer that is not a New York state business enterprise;~~

5 ~~(5) "recycled content goods" means supplies~~
6 ~~and materials composed in whole or in part of recycled~~
7 ~~materials; provided that the recycled materials content meets~~
8 ~~or exceeds the minimum content standards required by bid~~
9 ~~specifications; and~~

10 ~~(6) "virgin content goods" means supplies and~~
11 ~~materials that are wholly composed of nonrecycled materials or~~
12 ~~do not meet minimum recycled content standards required by bid~~
13 ~~specification.~~

14 ~~B. When bids are received only from nonresident~~
15 ~~businesses and resident businesses and the lowest responsible~~
16 ~~bid is from a nonresident business, the contract shall be~~
17 ~~awarded to the resident business whose bid is nearest to the~~
18 ~~bid price of the otherwise low nonresident business bidder if~~
19 ~~the bid price of the resident bidder is made lower than the bid~~
20 ~~price of the nonresident business when multiplied by a factor~~
21 ~~of .95.~~

22 ~~C. When bids are received only from nonresident~~
23 ~~businesses and resident manufacturers and the lowest~~
24 ~~responsible bid is from a nonresident business, the contract~~
25 ~~shall be awarded to the resident manufacturer whose bid is~~

.182573.6

1 ~~nearest to the bid price of the otherwise low nonresident~~
2 ~~business bidder if the bid price of the resident manufacturer~~
3 ~~is made lower than the bid price of the nonresident business~~
4 ~~when multiplied by a factor of .95.~~

5 ~~D. When bids are received only from resident~~
6 ~~businesses and resident manufacturers and the lowest~~
7 ~~responsible bid is from a resident business, the contract shall~~
8 ~~be awarded to the resident manufacturer whose bid is nearest to~~
9 ~~the bid price of the otherwise low resident business bidder if~~
10 ~~the bid price of the resident manufacturer is made lower than~~
11 ~~the bid price of the resident business when multiplied by a~~
12 ~~factor of .95.~~

13 ~~E. When bids are received from resident~~
14 ~~manufacturers, resident businesses and nonresident businesses~~
15 ~~and the lowest responsible bid is from a resident business, the~~
16 ~~contract shall be awarded to the resident manufacturer whose~~
17 ~~bid is nearest to the bid price of the otherwise low resident~~
18 ~~business bidder if the bid price of the resident manufacturer~~
19 ~~is made lower than the bid price of the resident business when~~
20 ~~multiplied by a factor of .95.~~

21 ~~F. When bids are received from resident~~
22 ~~manufacturers, resident businesses and nonresident businesses~~
23 ~~and the lowest responsible bid is from a nonresident business,~~
24 ~~the contract shall be awarded to the resident manufacturer~~
25 ~~whose bid is nearest to the bid price of the otherwise low~~

1 ~~nonresident business bidder if the bid price of the resident~~
2 ~~manufacturer is evaluated as lower than the bid price of the~~
3 ~~nonresident business when multiplied by a factor of .95. If~~
4 ~~there is no resident manufacturer eligible for award under this~~
5 ~~provision, then the contract shall be awarded to the resident~~
6 ~~business whose bid is nearest to the bid price of the otherwise~~
7 ~~low nonresident business bidder if the bid price of the~~
8 ~~resident business is made lower than the bid price of the~~
9 ~~nonresident business when multiplied by a factor of .95.~~

10 ~~G. When bids are received for virgin content goods~~
11 ~~only or for recycled content goods only, Subsections B through~~
12 ~~F of this section shall apply.~~

13 ~~H. When bids are received for both recycled content~~
14 ~~goods and virgin content goods and the lowest responsible bid~~
15 ~~is for virgin content goods, the contract shall be awarded to:~~

16 ~~(1) a resident manufacturer offering the~~
17 ~~lowest bid on recycled content goods of equal quality if the~~
18 ~~bid price of the resident manufacturer when multiplied by a~~
19 ~~factor of .90 is made lower than the otherwise low virgin~~
20 ~~content goods bid price;~~

21 ~~(2) a resident business offering a bid on~~
22 ~~recycled content goods of equal quality if:~~

23 ~~(a) the bid price of no resident~~
24 ~~manufacturer following application of the preference allowed in~~
25 ~~Paragraph (1) of this subsection can be made sufficiently low;~~

1 and

2 ~~(b) the lowest bid price of the resident~~
3 ~~business when multiplied by a factor of .90 is made lower than~~
4 ~~the otherwise low virgin content goods bid price; or~~

5 ~~(3) a nonresident business or nonresident~~
6 ~~manufacturer offering recycled content goods of equal quality~~
7 ~~if:~~

8 ~~(a) the bid price of no resident~~
9 ~~business or resident manufacturer following application of the~~
10 ~~preference allowed in Paragraph (1) or (2) of this subsection~~
11 ~~can be made sufficiently low; and~~

12 ~~(b) the lowest bid price of a~~
13 ~~nonresident offering recycled content goods when multiplied by~~
14 ~~a factor of .95 is made lower than the otherwise low virgin~~
15 ~~content bid price.~~

16 ~~I. When bids are received for both recycled content~~
17 ~~goods and virgin content goods and the lowest responsible bid~~
18 ~~is for recycled content goods offered by a nonresident business~~
19 ~~or nonresident manufacturer, the contract shall be awarded to:~~

20 ~~(1) a resident manufacturer offering the~~
21 ~~lowest bid on recycled content goods of equal quality if the~~
22 ~~bid price of the resident manufacturer when multiplied by a~~
23 ~~factor of .95 is made lower than the otherwise low recycled~~
24 ~~content goods bid price; or~~

25 ~~(2) a resident business offering a bid on~~

.182573.6

1 ~~recycled content goods of equal quality if:~~

2 ~~(a) the bid price of no resident~~
3 ~~manufacturer following application of the preference allowed in~~
4 ~~Paragraph (1) of this subsection can be made sufficiently low;~~
5 ~~and~~

6 ~~(b) the lowest bid price of the resident~~
7 ~~business when multiplied by a factor of .95 is made lower than~~
8 ~~the otherwise low recycled content goods bid price offered by a~~
9 ~~nonresident business or manufacturer.~~

10 ~~J. When bids are received for both recycled content~~
11 ~~goods and virgin content goods and the lowest responsible bid~~
12 ~~is for recycled content goods offered by a resident business,~~
13 ~~the contract shall be awarded to a resident manufacturer~~
14 ~~offering the lowest bid on recycled content goods of equal~~
15 ~~quality if the bid price of the resident manufacturer when~~
16 ~~multiplied by a factor of .95 is made lower than the otherwise~~
17 ~~low recycled content goods bid price.]~~

18 B. When a public body makes a purchase using a
19 formal bid process, the public body shall deem the bids
20 submitted by resident businesses to be five percent lower than
21 the bids actually submitted.

22 C. When a public body makes a purchase using a
23 formal request for proposals process:

24 (1) five percent of the relative weight of all
25 the factors used in evaluating the proposals shall be based on

1 whether the proposal was submitted by a resident business; or
2 (2) if the contract is awarded based on a
3 point-based system, resident businesses shall be awarded the
4 equivalent of five percent of the total possible points to be
5 awarded.

6 D. When a joint bid or joint proposal is submitted
7 by both resident and nonresident businesses, the resident
8 business preference provided pursuant to Subsection B or C of
9 this section shall be reduced in proportion to the percentage
10 of the contract, based on the dollar amount of the goods or
11 services provided under the contract, that will be performed by
12 a nonresident business as specified in the joint bid or
13 proposal.

14 E. The procedures provided in Sections 13-1-172
15 through 13-1-183 NMSA 1978 apply to a protest to a public body
16 concerning the awarding of a contract in violation of this
17 section.

18 ~~[K.] F. This section shall not apply when the~~
19 ~~expenditure of federal funds designated for a specific purchase~~
20 ~~is involved. [or for any bid price greater than five million~~
21 ~~dollars (\$5,000,000).]~~

22 ~~L. The provisions of this section shall not apply~~
23 ~~to the purchase of buses from a resident manufacturer or a New~~
24 ~~Mexico resident business that manufactures buses in New Mexico.~~
25 ~~It is the purpose of this subsection to:~~

1 ~~(1) allow any bus manufacturer or business~~
2 ~~that manufactures buses to compete openly for public~~
3 ~~procurement contracts in New Mexico without giving preference~~
4 ~~to a business based on the location of the place of manufacture~~
5 ~~of the buses;~~

6 ~~(2) give resident manufacturers and New Mexico~~
7 ~~resident businesses that manufacture buses an equal opportunity~~
8 ~~to sell their buses in states that have reciprocal preference~~
9 ~~laws; and~~

10 ~~(3) eliminate all different treatment of any~~
11 ~~kind under New Mexico law and by all political jurisdictions in~~
12 ~~the state between New Mexico resident businesses and~~
13 ~~manufacturers that manufacture buses and businesses in other~~
14 ~~states that manufacture and sell buses.] "~~

15 SECTION 2. Section 13-1-22 NMSA 1978 (being Laws 1969,
16 Chapter 184, Section 1, as amended) is amended to read:

17 "13-1-22. RESIDENT BUSINESS AND [MANUFACTURER] RESIDENT
18 CONTRACTOR CERTIFICATION [APPLICATION--INFORMATION] .-- [No
19 ~~resident business or resident manufacturer, as those terms are~~
20 ~~defined in Subsection A of Section 13-1-21 NMSA 1978, shall be~~
21 ~~given any preference in the awarding of contracts for~~
22 ~~furnishing materials or services to a state agency unless the~~
23 ~~resident business or resident manufacturer shall have qualified~~
24 ~~with the state purchasing agent as a resident business or~~
25 ~~resident manufacturer or both by making application to the~~

1 ~~state purchasing agent and receiving from him a certification~~
2 ~~number. The procedure for application and certification shall~~
3 ~~be as follows:~~

4 ~~A. the state purchasing agent shall prepare an~~
5 ~~application form for certification as a resident business or~~
6 ~~manufacturer, requesting such information and proof as he deems~~
7 ~~necessary to qualify the applicant under the terms of Section~~
8 ~~13-1-21 NMSA 1978;~~

9 ~~B. the resident business or resident manufacturer~~
10 ~~shall complete the application form and submit it to the state~~
11 ~~purchasing agent prior to the awarding of any contract in which~~
12 ~~the resident business or manufacturer desires to be given a~~
13 ~~preference; and~~

14 ~~C. the state purchasing agent shall examine the~~
15 ~~application and if necessary may seek additional information or~~
16 ~~proof to assure himself that the prospective business or~~
17 ~~manufacturer is indeed entitled to the statutory preference.~~
18 ~~If all is in order, he shall issue the supplier a distinctive~~
19 ~~certification number, which shall be valid until revoked, and~~
20 ~~which, when used on bids and other purchasing documents, shall~~
21 ~~entitle the business or manufacturer to the statutory~~
22 ~~preference.]~~

23 A. To receive a resident business preference
24 pursuant to Section 13-1-21 NMSA 1978 or a resident contractor
25 preference pursuant to Section 13-4-2 NMSA 1978, a business or

1 contractor shall submit with its bid or proposal a copy of a
2 valid resident business certificate or valid resident
3 contractor certificate issued by the state auditor.

4 B. An application for a resident business
5 certificate shall include an affidavit from a certified public
6 accountant setting forth that the business is authorized to do
7 and is doing business under the laws of this state and
8 maintains its principal place of business in this state and
9 that:

10 (1) the business has paid property taxes or
11 rent on real property in New Mexico and paid at least one other
12 tax administered by the taxation and revenue department in each
13 of the five years immediately preceding the submission of the
14 affidavit;

15 (2) if the business is an entrepreneur's
16 business, the entrepreneur has resided in New Mexico during the
17 five-year period immediately preceding the submission of the
18 affidavit and has not applied for a resident business or
19 resident contractor certificate pursuant to this section during
20 that time period;

21 (3) if the business is a relocated business,
22 at least eighty percent of the total personnel of the business
23 in the year immediately preceding the submission of the
24 affidavit were residents of New Mexico; or

25 (4) the business is identical in every way to

1 a previously certified business that meets all criteria but has
2 changed its name from that of the previously certified
3 business.

4 C. An application for a resident contractor
5 certificate shall include an affidavit from a certified public
6 accountant setting forth that the contractor is currently
7 licensed in this state and maintains its principal office and
8 place of business in this state and that:

9 (1) in each of the five years immediately
10 preceding the submission of the affidavit, the contractor has:

11 (a) paid property taxes or rent on real
12 property in New Mexico and paid at least one other tax
13 administered by the taxation and revenue department;

14 (b) paid unemployment compensation on at
15 least three full-time employees who are residents of the state;
16 and

17 (c) registered with the state at least
18 one vehicle;

19 (2) if the contractor is an entrepreneur, the
20 entrepreneur has resided in New Mexico during the five-year
21 period immediately preceding the submission of the affidavit
22 and has not applied for a resident business or resident
23 contractor certificate pursuant to this section during that
24 time period;

25 (3) if the contractor is a relocated business,

1 at least eighty percent of the total personnel of the business
2 in the year immediately preceding the submission of the
3 affidavit were residents of New Mexico; or

4 (4) the contractor is identical in every way
5 to a previously certified contractor that meets all criteria
6 but has changed its name from that of the previously certified
7 contractor.

8 D. The state auditor shall prescribe the form and
9 content of the application and required affidavit. The state
10 auditor shall examine the application and affidavit and, if
11 necessary, may seek additional information to ensure that the
12 business or contractor is eligible to receive the certificate
13 pursuant to the provisions of this section. If all is in
14 order, the state auditor shall issue a certificate within
15 thirty days of the submission of an application. A certificate
16 is valid for three years from the date of its issuance.

17 E. A business or contractor whose application for a
18 certificate is denied has fifteen days from the date of the
19 state auditor's decision to file an objection with the state
20 auditor. The person filing the objection shall submit evidence
21 to support the objection. The state auditor shall review the
22 evidence and issue a decision within fifteen days of the filing
23 of the objection.

24 F. If, following a hearing and an opportunity to be
25 heard, the state auditor finds that a business or contractor

1 provided false information to the state auditor in order to
2 obtain a certificate or that a business or contractor used a
3 certificate to obtain a resident business or resident
4 contractor preference for a joint bid or proposal and the
5 resident business or contractor did not perform the percentage
6 of the contract specified in the joint bid or proposal, the
7 business or contractor:

8 (1) is not eligible to receive a certificate
9 or a preference pursuant to Section 13-1-21 or 13-4-2 NMSA 1978
10 for a period of five years from the date on which the state
11 auditor became aware of the submission of the false information
12 or the failure to perform the contract as specified in the
13 joint bid or proposal; and

14 (2) is subject to an administrative penalty of
15 up to fifty thousand dollars (\$50,000) for each violation.

16 G. The state auditor may assess a reasonable fee
17 for the issuance of a certificate to cover the costs of
18 administering the state auditor's duties pursuant to this
19 section.

20 H. For purposes of this section:

21 (1) "entrepreneur" means a person who is an
22 owner and operator of an entirely new business that did not
23 exist in any form and that has been in existence for less than
24 five years; and

25 (2) "relocated business" means a business that

1 moved its principal place of business from another state to New
2 Mexico in the past five years."

3 SECTION 3. Section 13-4-2 NMSA 1978 (being Laws 1984,
4 Chapter 66, Section 2, as amended) is amended to read:

5 "13-4-2. RESIDENT CONTRACTOR DEFINED--APPLICATION OF
6 PREFERENCE.--

7 ~~[A. "Resident contractor" means a New Mexico~~
8 ~~resident contractor or a New York state business enterprise.~~

9 B. ~~"New Mexico resident contractor" means any~~
10 ~~person, firm, corporation or other legal entity if, at the time~~
11 ~~the contract is advertised for bids and at the time bids are~~
12 ~~opened, it has all required licenses and meets the following~~
13 ~~requirements:~~

14 ~~(1) if the bidder is a corporation, it shall~~
15 ~~be incorporated in New Mexico and maintain its principal office~~
16 ~~and place of business in New Mexico;~~

17 ~~(2) if the bidder is a partnership, general or~~
18 ~~limited, or other legal entity, it shall maintain its principal~~
19 ~~office and place of business in New Mexico;~~

20 ~~(3) if the bidder is an individual, he shall~~
21 ~~maintain his principal office and place of business in New~~
22 ~~Mexico; or~~

23 ~~(4) if a bidder who is a telecommunications~~
24 ~~company as defined by Subsection M of Section 63-9A-3 NMSA 1978~~
25 ~~or an affiliate of a telecommunications company has paid~~

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1 ~~unemployment compensation to the employment security division~~
2 ~~of the labor department at the applicable experience rate for~~
3 ~~that employer pursuant to the Unemployment Compensation Law on~~
4 ~~no fewer than ten employees who have performed services subject~~
5 ~~to contributions for the two-year period prior to issuance of~~
6 ~~notice to bid, the bidder will be considered to have fulfilled~~
7 ~~the requirements of Paragraph (1), (2) or (3) of this~~
8 ~~subsection. A successor to a previously qualified New Mexico~~
9 ~~contractor or resident contractor, where the creation of the~~
10 ~~bidder resulted from a court order, is entitled to credit for~~
11 ~~qualifying contributions paid by the previously qualified New~~
12 ~~Mexico contractor or resident contractor.~~

13 ~~C. "New York state business enterprise" means a~~
14 ~~business enterprise, including a sole proprietorship,~~
15 ~~partnership or corporation, that offers for sale or lease or~~
16 ~~other form of exchange, goods or commodities that are~~
17 ~~substantially manufactured, produced or assembled in New York~~
18 ~~state, or services, other than construction services, that are~~
19 ~~substantially performed within New York state. For purposes of~~
20 ~~construction services, a New York state business enterprise~~
21 ~~means a business enterprise, including a sole proprietorship,~~
22 ~~partnership or corporation, that has its principal place of~~
23 ~~business in New York state.~~

24 ~~D. For purposes of this section, "affiliate" means~~
25 ~~an entity that directly or indirectly through one or more~~

1 ~~intermediaries controls, is controlled by or is under common~~
2 ~~control with a telecommunications company through ownership of~~
3 ~~voting securities representing a majority of the total voting~~
4 ~~power of that entity.~~

5 ~~E. When bids are received only from nonresident~~
6 ~~contractors and resident contractors and the lowest responsible~~
7 ~~bid is from a nonresident contractor, the contract shall be~~
8 ~~awarded to the resident contractor whose bid is nearest to the~~
9 ~~bid price of the otherwise low nonresident contractor if the~~
10 ~~bid price of the resident contractor is made lower than the bid~~
11 ~~price of the nonresident contractor when multiplied by a factor~~
12 ~~of .95.~~

13 ~~F. No contractor shall be treated as a resident~~
14 ~~contractor in the awarding of public works contracts by a state~~
15 ~~agency or a local public body unless the contractor has~~
16 ~~qualified with the state purchasing agent as a resident~~
17 ~~contractor pursuant to this section by making application to~~
18 ~~the state purchasing agent and receiving from him a~~
19 ~~certification number. The procedure for application and~~
20 ~~certification is as follows:~~

21 ~~(1) the state purchasing agent shall prepare~~
22 ~~an application form for certification as a resident contractor,~~
23 ~~requiring such information and proof as he deems necessary to~~
24 ~~qualify the applicant under the terms of this section;~~

25 ~~(2) the contractor seeking to qualify as a~~

1 ~~resident contractor shall complete the application form and~~
2 ~~submit it to the state purchasing agent prior to the submission~~
3 ~~of a bid on which the contractor desires to be given a~~
4 ~~preference;~~

5 ~~(3) the state purchasing agent shall examine~~
6 ~~the application and if necessary may seek additional~~
7 ~~information or proof so as to be assured that the prospective~~
8 ~~contractor is indeed entitled to certification as a resident~~
9 ~~contractor. If the application is in proper form, the state~~
10 ~~purchasing agent shall issue the contractor a distinctive~~
11 ~~certification number which is valid until revoked and which~~
12 ~~when used on bids and other purchasing documents for state~~
13 ~~agencies or local public bodies, entitles the contractor to~~
14 ~~treatment as a resident contractor under Subsection E of this~~
15 ~~section; and~~

16 ~~(4) the certification number issued pursuant~~
17 ~~to Paragraph (3) of this subsection shall be revoked by the~~
18 ~~state purchasing agent upon making a determination that the~~
19 ~~contractor no longer meets the requirements of a resident~~
20 ~~contractor as defined in this section.]~~

21 A. For the purposes of this section:

22 (1) "public body" means the executive,
23 legislative and judicial branches of state and local
24 governments, the New Mexico finance authority, the New Mexico
25 mortgage finance authority, the New Mexico renewable energy

1 transmission authority, the New Mexico exposition center
2 authority, the New Mexico hospital equipment loan council,
3 entities on state-owned land and all agencies or entities
4 created by the constitution of New Mexico or any branch of
5 government that receives public funding, including political
6 subdivisions, home rule municipalities, special taxing
7 districts, school districts and institutions of higher
8 education;

9 (2) "public works contract" means a contract
10 for construction, construction management, architectural,
11 landscape architectural, engineering, surveying or interior
12 design services; and

13 (3) "resident contractor" means any person,
14 firm, corporation or other legal entity that has a valid
15 resident contractor certificate issued by the state auditor
16 pursuant to Section 13-1-22 NMSA 1978.

17 B. For the purpose of awarding a public works
18 contract, a public body shall deem the bids submitted by
19 resident contractors to be five percent lower than the bids
20 actually submitted.

21 C. When a public body awards a contract using a
22 formal request for proposals process:

23 (1) five percent of the relative weight of all
24 the factors used in evaluating the proposals shall be based on
25 whether the proposal was submitted by a resident contractor; or

1 (2) if the contract is awarded based on a
2 point-based system, resident contractors shall be awarded the
3 equivalent of five percent of the total possible points to be
4 awarded.

5 D. When a joint bid or joint proposal is submitted
6 by both resident and nonresident contractors, the resident
7 contractor preference provided pursuant to Subsection B or C of
8 this section shall be reduced in proportion to the percentage
9 of the contract, based on the dollar amount of the goods or
10 services provided under the contract, that will be performed by
11 a nonresident contractor as specified in the joint bid or joint
12 proposal.

13 E. The procedures provided in Sections 13-1-172
14 through 13-1-183 NMSA 1978 apply to a protest to a public body
15 concerning the awarding of a contract in violation of this
16 section."

17 SECTION 4. Section 13-4-5 NMSA 1978 (being Laws 1933,
18 Chapter 19, Section 1, as amended by Laws 1997, Chapter 1,
19 Section 4 and also by Laws 1997, Chapter 2, Section 4) is
20 amended to read:

21 "13-4-5. USE OF NEW MEXICO MATERIALS.--~~[A.]~~ In all public
22 works within New Mexico, whether constructed or maintained by
23 the state or by a department, ~~[a]~~ board ~~[a]~~ or commission of
24 the state or by any political subdivision ~~[thereof]~~ of the
25 state, or in any construction or maintenance to which the state

1 or any political subdivision [~~thereof~~] of the state has granted
2 aid, preference shall be given to materials produced, grown,
3 processed or manufactured in New Mexico by citizens or
4 residents of New Mexico [~~or provided or offered by a New York~~
5 ~~state business enterprise, and such materials shall be used~~
6 ~~where they are deemed satisfactory for the intended use~~]. In
7 any case where, in the judgment of the different officers,
8 boards, commissions or other [~~authority~~] authorities in this
9 state [~~now or hereafter~~] vested with the power of contracting
10 for material used in the construction or maintenance of public
11 works referred to in this section, it appears that an attempt
12 is being made by producers, growers, processors or
13 manufacturers in the state to form a trust or combination of
14 any kind for the purpose of fixing or regulating the price of
15 materials to be used in any public works to the detriment of or
16 loss to the state, [~~then~~] the provisions of this section shall
17 not apply.

18 [B. ~~As used in this section, "New York state~~
19 ~~business enterprise" means a business enterprise, including a~~
20 ~~sole proprietorship, partnership or corporation, that offers~~
21 ~~for sale or lease or other form of exchange, goods or~~
22 ~~commodities that are substantially manufactured, produced or~~
23 ~~assembled in New York state, or services, other than~~
24 ~~construction services, that are substantially performed within~~
25 ~~New York state. For purposes of construction services, a New~~

1 ~~York state business enterprise means a business enterprise,~~
2 ~~including a sole proprietorship, partnership or corporation,~~
3 ~~that has its principal place of business in New York state.]"~~

4 SECTION 5. TEMPORARY PROVISION.--A certification as a
5 resident business or resident manufacturer by the general
6 services department that is in effect on June 30, 2011 is valid
7 until January 1, 2012 for the purpose of obtaining a resident
8 business preference pursuant to Section 13-1-21 NMSA 1978. A
9 certification as a resident contractor by the general services
10 department that is in effect on June 30, 2011 is valid until
11 January 1, 2012 for the purpose of obtaining a resident
12 contractor preference pursuant to Section 13-4-2 NMSA 1978.

13 SECTION 6. REPEAL.--Section 13-1-21.2 NMSA 1978 (being
14 Laws 1997, Chapter 1, Section 1 and Laws 1997, Chapter 2,
15 Section 1) is repealed.

16 SECTION 7. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2011.

underscored material = new
[bracketed material] = delete

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HOUSE JOINT MEMORIAL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

A JOINT MEMORIAL

RECOGNIZING THAT THE REVITALIZATION AND DEVELOPMENT OF LOCAL
AND REGIONAL FOOD SYSTEMS ARE CRITICAL PARTS OF PROMOTING THE
HEALTH, WELL-BEING AND ECONOMIC VITALITY OF RURAL AND
UNDERSERVED URBAN COMMUNITIES.

WHEREAS, New Mexico has a long tradition of agricultural
production for local consumption; and

WHEREAS, for many rural, tribal and acequia communities,
the cultural and spiritual significance of food encompasses an
ancestral connection to land and water, the physical and
emotional benefits of working the land, the value of community
interdependence in food production and the health benefits of
native foods; and

WHEREAS, this connection is being challenged as small-
scale farming and ranching have become less economically

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1 competitive in conventional agribusiness; and

2 WHEREAS, in more than one-third of New Mexico counties,
3 the majority of residents must travel more than ten miles to
4 the nearest grocery store; and

5 WHEREAS, some members of rural communities have to travel
6 seventy miles each way to the nearest grocery store; and

7 WHEREAS, the cost of food in rural communities is
8 currently as much as forty percent higher than the cost of food
9 in urban grocery stores; and

10 WHEREAS, nearly one in four New Mexicans who reside in
11 towns, rural areas or tribal communities with populations below
12 fifty thousand live below the poverty line; and

13 WHEREAS, research has shown that residents of both urban
14 and rural communities who lack easy access to healthy foods
15 have a higher risk for diabetes, heart disease and other diet-
16 related diseases; and

17 WHEREAS, currently, ninety-seven percent of the
18 agricultural products grown in the state leaves the state, yet
19 the state imports nearly four billion dollars (\$4,000,000,000)
20 worth of food from elsewhere; and

21 WHEREAS, demand for locally grown food is growing, while
22 many small- and medium-sized New Mexico farmers and ranchers
23 lack the storage, processing and distribution infrastructure
24 necessary for them to access these growing markets; and

25 WHEREAS, food and farming businesses, including grocery

1 stores, packing and processing facilities and food
2 distribution, present important opportunities for economic
3 development in rural and underserved urban communities; and

4 WHEREAS, many rural communities are developing initiatives
5 to revitalize their local food and farming systems; and

6 WHEREAS, the active support of local and state governments
7 can contribute to the success of these initiatives; and

8 WHEREAS, the federal government has recognized the
9 importance of local food system development through its "know
10 your farmer, know your food" initiative;

11 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
12 STATE OF NEW MEXICO that the revitalization and development of
13 local and regional food systems be recognized as a critical
14 effort in promoting the health, well-being and economic
15 vitality of all rural and underserved urban communities; and

16 BE IT FURTHER RESOLVED that the efforts of communities and
17 organizations that are currently working on food system
18 revitalization efforts be commended; and

19 BE IT FURTHER RESOLVED that state agencies and tribal,
20 county, municipal and other governmental entities be urged to
21 support local and regional food system development efforts; and

22 BE IT FURTHER RESOLVED that state agencies and tribal,
23 county, municipal and other governmental entities be encouraged
24 to take an active role in collaborating with and providing
25 assistance to local and regional food system development

1 efforts; and

2 BE IT FURTHER RESOLVED that a copy of this memorial be
3 transmitted to the governor.

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HOUSE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

MAKING AN APPROPRIATION FOR THE NEW MEXICO DEPARTMENT OF
AGRICULTURE TO PROMOTE AND DEVELOP NEW MEXICO'S FARMERS'
MARKETS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Eighty-five thousand dollars
(\$85,000) is appropriated from the general fund to the board of
regents of New Mexico state university for expenditure in
fiscal year 2012 for the New Mexico department of agriculture
program to promote and develop New Mexico's farmers' markets
for economic development. Any unexpended or unencumbered
balance remaining at the end of fiscal year 2012 shall revert
to the general fund.

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